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ABSTRACT

A basic objective of this study has been to look beyond statistical details of state aid programs to broader questions concerning the limitations, strategies, and impact of such programs in restoring a more effective role to private colleges and universities in the total national enterprise of higher education. Chapter 2 and Appendix A comprise the most comprehensive effort to evaluate constitutional limitations that can directly or indirectly affect the viability of state aid legislation in each of the fifty states, Chapter 3 through 5 illustrates both legislative intent and flexibility of approach, and Chapter 6 provides selective illustrations of overall enrollment trends, program growth and financial stimulus resulting from state aid legislation. (Author)

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STATE FINANCIAL MEASURES INVOLVING THE PRIVATE SECTOR OF HIGHER EDUCATION

A Report to the National Council of Independent Colleges and Universities

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TABLE OF CONTENTS

Preface		iii
Chapter I:	The Current National Perspective	1
Chapter II:	The Constitutional Aspects of State Aid	7
Chapter III:	Types of State Aid: General Characteristics	17
Chapter IV:	Institutional Support Programs	25
Chapter V:	Student Support Programs	35
Chapter VI:	Impact of Student Support on Private Colleges and Universities	45
Appendix A:	Summary Reports on Constitutional Law	53
Appendix B:	Grant and Scholarship Program Highlights	87

CHARTS AND TABLES

Chart A:	Programs of Institutional Support	22
Chart B:	Programs of Student Aid	23
Table I:	Distribution of Formula Grants	26
Table II:	Facilities Assistance Programs	28
Table III:	Institutional Support Programs	30
Table IV:	Contracts for Specialized Services	34
Table V:	Pattern of Program Options	37
Table VI:	Maximum Stipends Among Program Options	38
Table VII:	Student Financial Assistance Programs	40
Table VIII:	Awards Usable at Public/Private Institutions, 1973-74	49
Table IX:	Awards to Private College Students, 1972-73	49
Table X:	State Aid Programs for Students Attending Private Institutions, 1971-72, 72-73, 73-74	50
Table XI:	Need-Based Grant Programs	91
Table XII:	State-Administered Scholarship Programs	99

Preface

This study was commissioned by the National Council of Independent Colleges and Universities as one aspect of a task force project on state financial measures in the private sector of higher education. The study examines these measures in terms of constitutional limitations and programmatic details, and for evidence of impact. A major emphasis is upon recurrent patterns which appear to indicate policy trends of national significance. Commentary on legal issues in all fifty states, and tabular summaries of 33 state programs, are also featured.

The study project was largely a cooperative enterprise between three co-authors who have been individually or jointly involved with state aid issues for the past seven years.[1] Professors Howard and Chronister assumed major responsibilities for the legal and programmatic research components, respectively; and wrote the corresponding chapters on constitutional aspects, program characteristics, and detailed features of institutional and student support programs, as well as impact. The summaries of fifty state constitutions (Appendix A) are Professor Howard's. Professor Chronister developed the Grant and Scholarship Program Highlights (Appendix B). Professor McFarlane, in addition to serving as project coordinator, wrote the opening chapter, contributed to Chapters III through V, and acted as general editor for the final report.

Research activities themselves required the services of nine graduate assistants over a period of four months part-time and three months full-time, in addition to the supervisory involvement of principal investigators Howard and Chronister. These research teams depended heavily on the voluntary cooperation of numerous agencies and individuals for primary source material: legislative service bureaus in each of the fifty states, councils or associations of private colleges and universities in thirty-three states (as well as the headquarters office of the national association) and offices of state attorneys-general.

All of these agencies were especially helpful in providing copies of pertinent state legislation and administrative guidelines; data on funding levels; decisions on court tests; other official or advisory legal opinions; and local or national studies of program impact. To all who responded so promptly and willingly to requests for information, the authors express their deep appreciation.

The formidable tasks of collecting, collating, tabulating and interpreting the massive amounts of research data involved in the study required many tedious hours of laborious work, as well as frantic last-minute rushes to meet deadlines. The authors wish to acknowledge with a special word of thanks the preliminary research efforts of graduate assistants Robert B. Collins, Christopher R. Brewster and William C. Cleveland during the early phases of the project; and to commend especially the work of graduate assistants

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Christopher J. Berry, James R. Bayes, Edward M. Ford, Carter Glass IV, G. Christopher Wood, and E. Davis Martin during the later stages. The authors are particularly indebted to Ms. Marlene McGurn, Chief, Anglo-American Law Division, Library of Congress, for her cooperation in expediting access to source material on the legal aspects of the study; and to Polly Haecker, Elaine Oakey, and June Sale for keeping the whole project on schedule.

FOOTNOTES TO PREFACE

[1]William H. McFarlane, Professor of Philosophy, George Mason University, and former Director, State Council of Higher Education for Virginia. Consultant to the North Carolina Board of Higher Education (1968), Southern Regional Education Board (1969 and 1971), and Council of Independent Colleges in Virginia (1971-72). See relevant publications of these organizations and also *Journal of Law and Education*, October, 1973.

A. E. Dick Howard, Professor of Law, University of Virginia, currently on leave as Visiting Fellow, Woodrow Wilson International Center for Scholars, Smithsonian Institution, Washington, D. C. Executive Director, Virginia Commission on Constitutional Revision (1968-69), and counsel to the Council of Independent Colleges in Virginia (Miller v. Ayers, 213 Va. 251, 191 S.E.2d 261 [1972] and 214 Va. 171, 198 S.E.2d 634 [1973]). See commentary in *Report of the Commission on Constitutional Revision*, Richmond, Virginia, 1969, and *Journal of Law and Education*, October, 1973.

Jay L. Chronister, Director of the Center for Higher Education, School of Education, University of Virginia. Consultant to the Council of Independent Colleges in Virginia (1971-72). See *Fact Book on Private Higher Education in Virginia* (1971) and *Journal of Law and Education*, October, 1973.

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CHAPTER I

The Current National Perspective

A basic objective of this study has been to look beyond statistical details of state aid programs to broader questions concerning the limitations, strategies and impact of such programs in restoring a more effective role to private colleges and universities in the total national enterprise of higher education. Chapter II and Appendix A, for example, comprise the most comprehensive effort to date to evaluate constitutional limitations which can directly or indirectly affect the viability of state aid legislation in each of the fifty states. Chapters III through V and Appendix B describe programmatic features in definitive categories that illustrate both legislative intent and flexibility of approach. And Chapter VI provides selective illustrations of overall enrollment trends, program growth and financial stimulus resulting from state aid legislation.*

In short, this study develops an updated national perspective on state aid programs. It comes to some rather positive conclusions as to policy trends and indicates a healthy pattern of program growth while raising some questions for additional study with respect to impact. Especially promising are numerous signs that the entire movement is increasingly accepted, not merely as an *ad hoc* effort to "save the private colleges," but as an entirely legitimate continuation of a venerable tradition of cooperative relationships between government and private higher education dating back to colonial times. Public policy-makers openly affirm the wisdom and economy of state aid to private higher education as a necessary means of preserving a pluralistic balance in the total higher educational system.

The rest of this opening chapter reinforces the foregoing conclusions by selectively reviewing in general terms the affirmative case for the state aid movement. The immediately following section explores the more positive connotations of "state aid" as it has applied throughout the greater part of the history of higher education in this country. The remaining sections then examine the legal, programmatic and policy ramifications of these connotations as introductory highlights to the detailed text of the study itself.

Historical bases. Although it has become commonplace in recent years to view the American enterprise in higher education as intrinsically divided into "public" and "private" sectors, this outlook is neither wholly consistent with the weight of historical evidence, nor entirely valid in terms of constitutional law or public policy. It has been accurately observed, for example, that higher education in this country "... began as neither public nor private,"[1] but for the most part as a jointly-shared social enterprise between private or church-related groups and the colonial governments. And even after ratifica-

*All data verified as of May 31, 1974.

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tion of the First Amendment to the new Federal Constitution, ". . . Congress often made grants of public lands to schools . . .," as well as cash grants for more informal types of missionary education, ". . . without the requirement that the schools be public."[2] Individual states continued with analogous versions of federal practices until well into the 19th century, so that many notable colleges ". . . were established and sometimes operated with combined grants from public and private sources."[3]

In fact, the public/private distinction in higher education, as we now view it, appears to have had its genesis with the rise to prominence of the state university and public land-grant college late in the 19th century. Similarly, increasing limitations or even prohibitions with respect to governmental funding of church-related colleges do not appear to have originated entirely from a concern with sectarianism as such; rather they seem to have resulted mainly from internal divisiveness among the sects themselves in their competition for preferential treatment in receiving public funds.

Until quite recently, moreover, it would have been difficult to argue that the concept of distinctive "sectors" or "systems" of higher education had much practical significance. It was the massive, perhaps convulsive, growth of statewide systems of publicly-sponsored colleges and universities in the 1950s and 1960s which gave this distinction its real currency. And it is out of the circumstances surrounding this same distinction that "state aid for private higher education" became more literally descriptive of an important, if sometimes controversial, issue of public policy.

In the process of emerging as an important issue, however, the "state aid" policy also inherited a number of prejudicial impediments that still divert attention from the essential soundness of the doctrine and, in many states, have been the underlying causes for recurring delays in enacting or implementing effective legislation. Misconceptions involving the church-state issue are one such impediment; another is the mistaken belief that, more often than not, public grants to private education confer public benefits without reciprocal returns in public service or accountability. But these antagonisms are gradually disappearing.

Legal bases. With respect to the church-state issue, most court cases involving relationships between government and private higher education are of comparatively recent origin. Moreover, the more prominent decisions in such cases appear, on the whole, to uphold traditional historical practices. At the federal level, for example, the Supreme Court has repeatedly rejected an absolutist "wall of separation" interpretation of the establishment clause of the First Amendment, developing instead a series of exceptive tests such as "secular legislative purpose" and "degrees of separation or entanglement" to guard against governmental interference with, or support of, the sectarian aspects of church-related educational institutions.

Although constitutional language among the fifty states varies widely, it is frequently much more restrictive in defining the limits for governmental involvement with church organizations, particularly schools. Nevertheless, it still seems fair to say that among the prevailing themes in these constitutions are prohibitions against the flow of public funds to support sectarianism and, in a wider context, against providing public money for private advantage (e.g.,

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aid to corporations or other private agencies organized for profit). In many states, however, courts have tended to shape state constitutional law in response to newer issues, sometimes assimilating a state's law to United States Supreme Court decisions on questions of church and state.

But a national perspective on fifty individual constitutions turns very quickly into misleading overgeneralizations. For this reason, in particular, a major conclusion of this report is that a reference volume is required that will be applicable to constitutional and related legal considerations for each state individually. Chapter II of this report offers some general observations on federal and state constitutional law, and Appendix A provides reports for each of the fifty states. Nevertheless, it must be emphasized here that these reports are quite summary in nature and, without additional background, are too brief to provide technical assistance for legal experts who may be called upon to prepare new forms of state aid legislation, to improve upon existing forms, or to defend either of these before legislative bodies or the courts.

Programmatic bases. The American tradition of governmental cooperation (including financial arrangements) with nonpublic educational institutions not only dates back to colonial times but in some of the older states has been in continuous existence up to the present. Before contemporary connotations of the term arose, the notion that state governments were somehow "aiding" what we now call private institutions through these arrangements would have been irrelevant, to say the very least, if not downright meaningless. For, in a manner of speaking, these arrangements also involved (and still do) a type of "institutional aid" to these states, in the form of educational services that otherwise would have required substantial investments in facilities and programs at far greater public expense. Thus, the weight of American tradition has been largely on the side of granting public funds to "private" colleges and universities for essential public functions, so long as they were not notoriously sectarian in their outlook or practices.

The overall form and substance of contemporary state aid programs, as detailed in Chapters III through V of this report, are in fact to some extent an outgrowth of these historic practices. Nineteen states have developed (or augmented) relationships with their private institutions, through such devices as specialized service contracts, facilities assistance programs, and "across-the-board" formula grants, i.e., grants to provide such institutions with increased unrestricted current funds. A total of 33 states (including the foregoing nineteen) have enacted and funded a variety of state-administered programs of student support, principally in the form of grants and scholarships; and five more are in the process of moving toward that goal. Invariably, such programs allow a student to attend a private institution if he or she chooses, and in a significant number of cases, limit the choice to private sector institutions entirely.

It is generally clear, and often conclusive, that a major emphasis in all these programs is either utilization of private educational resources, or increased enrollments among private sector institutions. Much of the impetus for these new developments can be safely ascribed to that phase of the recent public "systems" boom which found state legislatures increasingly fretful about duplication of effort among public institutions; and which saw public

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institutions turning away students while private institutions were desperately trying to fill empty classrooms and dormitories. Although both public and private institutions now share a common predicament in their so-called "new depression," it is at least the case that the state aid movement is firmly entrenched as a significant part of the total national enterprise in higher education, and for a host of entirely legitimate reasons cannot be viewed (as it never could) as a one-way street.

Policy bases. Though some of the adverse consequences of unrestrained enthusiasm for statewide systems composed entirely of public institutions were foreseen early on, it was not until about 1966 or 1967 that the first serious (albeit groping) efforts were made to bring the policy issues of state aid programs into clearer public focus. A few pioneering states established various types of commissions to study such matters as how private institutions could be "made an integral part" of statewide higher education, or how to define the "proper place" of private colleges and universities in a state system of higher education; or how such institutions could be "appropriately related to public ones, without impairing their freedom" in order to aid them in the "fulfillment of their task."[4] From such studies, and others as well, has come the general affirmation that "pluralism" in higher educational systems should be the essential aim of governmental action in enacting state aid programs.

The underlying rationale of "pluralism" in the contemporary context has been variously stated in the intervening years by numerous public and quasi-public bodies, but perhaps nowhere more succinctly than in one of the earlier reports of the Carnegie Commission on Higher Education:

> *"The special contributions and problems of the private institutions must be seen in the light of their role as an essential component of a diverse, complex, diffuse, and yet highly responsive system of higher education, a system whose value to the nation has been amply demonstrated. In this context, private institutions appear in proper perspective as a precious set of 'assets-in-being.' They help to promote freedom, diversity, and excellence. If their effectiveness is impaired, American higher education as a whole will suffer."*[5]

Additionally, the specific policy bases of state aid programs have been progressively refined. Not necessarily in the order of their importance, the following statements reflect the most commonly stated justifications for the numbers and varieties of state aid programs which are now operative:

1. More effective utilization of total state resources for higher education.
2. Maintenance of fiscal viability in the private sector.
3. Increased student access to some form of postsecondary education.
4. Increased opportunity for students to obtain a college education at an institution of their own choosing.

These policy themes are to be found, sometimes explicitly, in the detailed review of state aid programs encompassed by Chapters III through V. What is

not entirely clear, however, is how effective such programs have been in the overall effort to implement the policies. The evidence is persuasive that the programs are aimed in the right direction, but to what extent they can be improved upon or added to, all within appropriate legal boundaries, remains to be seen; and this would comprise another entire study far beyond the scope of this present effort.

FOOTNOTES TO CHAPTER I

[1]Allan O. Pfnister, "Developing Relationships between Public and Private Higher Education," Proceedings of the 19th SREB Legislative Work Conference (Atlanta: Southern Regional Education Board, 1970) pp. 38-39.

[2]William H. McFarlane and Charles L. Wheeler, *Legal and Political Issues of State Aid for Private Higher Education*, (Atlanta: Southern Regional Education Board, 1971) p. 10.

[3]*Ibid.*

[4]Paraphrased or excerpted from commission studies in Missouri (1967), Texas (1968), and Illinois (1969), respectively.

[5]H. G. Bowen, *The Economics of Major Private Universities*, Carnegie Commission on Higher Education (New York: McGraw-Hill, 1968).

CHAPTER II

The Constitutional Aspects of State Aid

Programs involving state aid at the level of private higher education are rarely free of constitutional implications. The drafter of such a program must concern himself with both the Federal Constitution and the constitution of his own state. Where some of the private colleges involved are church-related, the central questions typically will be those arising from the religion provisions of the Federal and State Constitutions. In addition, there are likely to be relevant state constitutional provisions (such as those governing the objects for which public funds may be spent) whose impact should be considered, quite apart from questions of sectarianism.

The Federal Constitution. Decisions of the United States Supreme Court rendered in 1971 and in 1973 lay down First Amendment guidelines. Those opinions are of particular relevance because of the distinction they draw between programs involving primary and secondary schools and those operating at the level of higher education. In one opinion, *Lemon v. Kurtzman*, the Court struck down, on First Amendment grounds, a Rhode Island program of salary supplements for teachers in nonpublic schools (mostly Roman Catholic) and a Pennsylvania program authorizing the "purchase" from nonpublic schools of "secular educational services," reimbursing schools for teachers' salaries, textbooks, and instructional materials. Both programs were found to give rise to "excessive entanglement between government and religion."[1]

On the same day as the *Lemon* decision, the Court decided *Tilton v. Richardson*, upholding, with some modification, the Federal Higher Education Facilities Act of 1963. That statute provided federal construction grants for college and university facilities, excluding facilities "used or to be used for sectarian instruction or as a place for religious worship, or . . . primarily in connection with any part of the program of a school or department of divinity." Four church-related colleges and universities in Connecticut received construction grants under the Act, and in *Tilton* the Court upheld the grants as supporting legitimate secular functions of the colleges.[2]

In a line of church-and-state decisions, the Supreme Court has evolved three questions which it asks in cases in which a litigant asserts that a governmental program effects an establishment of religion in violation of the First Amendment:

(1) Does the program reflect a secular legislative purpose?

(2) Is the primary effect of the program to advance or inhibit religion?

(3) Does the administration of the program entail an excessive government entanglement with religion?

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The Court asked these three questions in *Tilton* and found that the federal statute passed muster on all three counts. Noting that in *Lemon* the Court was invalidating the Pennsylvania and Rhode Island programs on grounds of excessive entanglement, Chief Justice Burger in *Tilton* distinguished *Lemon* by pointing to "significant differences between the religious aspects of church-related institutions of higher learning and parochial elementary and secondary schools." Firstly, the Chief Justice observed that college students "are less impressionable and less susceptible to religious indoctrination" than are younger students. Secondly, "by their very nature, college and post graduate courses tend to limit the opportunities for sectarian influence by virtue of their own internal disciplines." Thirdly, many church-related colleges "are characterized by a high degree of academic freedom." Reviewing the record in *Tilton*, the Chief Justice touched such matters as admissions, faculty appointments, religion courses, and academic freedom and concluded that religious indoctrination was not a substantial purpose or activity of any of the four colleges. Consequently there was less need for intensive government surveillance of the aid program and hence less opportunity for excessive entanglement between government and religion. Bolstering this conclusion was the "non-ideological" character of the kind of aid extended: construction grants in *Tilton*, as opposed to subsidies of teachers in *Lemon*. Also reducing the risk of entanglement in *Tilton* was the fact that the government aid was a "one-time, single-purpose" grant.[3]

In 1973, the Supreme Court decided several cases which once again, as in 1971, upheld a governmental program aiding private, church-related colleges at the same time that the Court struck down programs aiding nonpublic elementary and secondary schools. For example, in *Committee for Public Education & Religious Liberty v. Nyquist*, the Court invalidated three New York programs aiding nonpublic elementary and secondary schools, one which gave direct money grants for maintenance and repair of facilities and equipment to ensure the students' "health, welfare, and safety," one which gave tuition grants, based on parents' income, to parents of children in such schools, and one which gave income tax relief to parents not qualifying for tuition grants. All three sections of the New York statute were found to advance the religious mission of sectarian schools, in violation of the establishment clause of the First Amendment.[4]

On the same day as *Nyquist*, however, the Court decided *Hunt v. McNair*, upholding South Carolina's creation of a state authority empowered to issue revenue bonds to assist private colleges in constructing capital facilities.[5] A South Carolina taxpayer had challenged a proposal that the authority issue bonds to assist the Baptist College of Charleston to refinance capital improvements and to complete a dining hall. Writing for the majority, Mr. Justice Powell concluded that the purpose of the statute was secular, that the statute did not have the primary purpose of advancing or inhibiting religion, and that it did not foster an excessive entanglement with religion. Justice Powell acknowledged, in discussing primary effect, that the college's trustees were elected by the South Carolina Baptist Convention and that the Convention had to approve any charter amendments and certain financial transactions. But recalling *Tilton*, Justice Powell found that, on the record in

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Hunt, there was no more basis to conclude that the college's operations were "oriented significantly towards sectarian rather than secular education" than was the case with the four Catholic colleges in *Tilton*.[6]

Taking the 1971 and 1973 decisions together, one may make several observations:

(1) The Court makes a significant distinction between programs aiding nonpublic elementary and secondary schools and those aiding private colleges, including colleges that are church-related. A variety of programs aiding parochial schools were struck down in the 1971 and 1973 decisions, while in both years the Court upheld direct aid to colleges whose church ties were palpable.

(2) First Amendment challenges to programs aiding private higher education will be decided on a case-by-case basis, on the facts of a particular case, rather than on the face of a statute. The decisions in both *Tilton* and *Hunt* turned on the records in the respective cases.

(3) The Court appears to take nonsectarianism at private colleges—academic freedom, open enquiry, professional standards—as the norm. Hence the burden is on those who challenge a program to show that an institution being aided departs from that norm and in fact is characterized by religious indoctrination.

(4) Formal ties to a church—such as a religious body's power to appoint trustees or to approve charter amendments—are not enough to disqualify a college for governmental aid. The judicial enquiry is directed instead to the college's actual operations—its admissions and faculty hiring policies, requirements that students attend religious services, the contents of required religion courses, and the like.[7]

(5) A program, to be constitutional, must satisfy independently the three tests which the Court has fashioned in establishment clause cases—that the program has a secular purpose, that its primary effect is other than to advance or inhibit religion, and that it does not foster an excessive entanglement with religion.

(6) Making an affirmative showing of a legitimate secular purpose is not difficult. The preambles to the Federal and South Carolina statutes upheld in *Tilton* and *Hunt* respectively are good examples of the kinds of findings the Court will respect.

(7) Avoiding aid to religion requires that safeguards and limitations be incorporated into a program. For example, in *Tilton* the Chief Justice noted that the Higher Education Facilities subsidized by federal funds "would be devoted to the secular and not the religious function of the recipient institutions."[8] Similarly, in *Hunt*, Justice Powell noted that the South Carolina statute ruled out aid for facilities to be used for religious purposes.[9]

(8) In general, the Court sees less risk of excessive entanglement in programs involving higher education than in those aiding nonpublic elementary

and secondary schools. This follows from the Court's recognition that church-related colleges pursue a secular objective similar in kind to that sought by nondenominational institutions and from the Court's appreciation of the fact that the atmosphere on most college campuses, church-related or not, gives far less occasion for religious indoctrination than does the parochial school environment.

(9) Whether a program aiding private higher education will be found to be constitutional will turn in part on the nature of the aid. In his opinion in *Tilton*, Chief Justice Burger was influenced by the "nonideological" character of the aid being provided—he contrasted construction grants in *Tilton* with subsidies to teachers in *Lemon*—and by the fact that the aid was a "one-time, single-purpose" grant. He noted that no one of the three factors in *Tilton*—religious indoctrination not being a substantial purpose or activity of the aided colleges, the nonideological character of the aid, and its one-time, single-purpose nature would by itself be decisive. Hence a case involving, for example, tuition grants to college students, subsidies to college professors' salaries, or other programs might require a fresh balancing by the Court of the factors which might suggest the presence or absence of entanglement.

State constitutions. For draftsmen in most states, devising an aid program which complies with the First Amendment is likely to be a less troublesome matter than being sure that the program satisfies the state constitution. The religion provisions of state constitutions are often applied with greater strictness than is the First Amendment. Moreover, there are non-religion clauses, e.g., those prohibiting the lending of the state's credit, which must be reckoned with.

Religion clauses in state constitutions take several forms. Some directly parallel the First Amendment, for example, Alaska's provision (Art. I, § 4), "no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof." More commonly, a state constitution's religion clauses are a good deal longer and more involved than the First Amendment. The variety of the state provisions and the range of judicial interpretations placed upon them make unfeasible any effort, in a brief study such as the present one, to offer generalizations about them. In particular, any effort to draft a "model" statute for a state program of tuition grants or other aid would founder on the peculiarities of a particular state's law.

In addition to the religion clauses, the draftsman should be aware of other provisions which may operate to prevent or limit certain kinds of aid to private higher education, whether church-related or not. It is common, for example, for state constitutions to have provisions born of unhappy experiences in the nineteenth century with state aid to railroads and other internal improvements—prohibiting the State and its political subdivisions from lending their credit to any person or association.[10] A state constitution may require that taxes be levied and public funds spent only for a "public purpose."[11] There may be a prohibition on the appropriation of public funds for the support or benefit of any private educational institution, whether sectarian or not.[12] These examples simply illustrate the variety of provisions which, although they may have originated in some historically distinct

problem, may be so interpreted as to be an impediment to programs aiding private higher education. Here, as with the religion provisions, the gloss which state courts and attorneys general have laid on the constitutional language virtually dictates that each state be approached as *sui generis*.

Those initiating a program in one state can, however, profit from knowing something of the experience of other states. It is with this thought in mind that the brief synposes in Chapter II are presented. Were space to permit, a fuller state-by-state discussion (which would total perhaps 1000 pages) would be more useful.

In addition to the synopses of the states' experience, a few observations may be made about some of the nuances which one may encounter in attempting to bring an aid program into line with a state constitution.

(1) A number of states, especially in recent years, have amended their constitutions explicitly to permit various forms of aid to private colleges or to students attending them. Georgia's Constitution, for example, was amended in 1972 to provide (Art. VII, § 1):

> *Notwithstanding any other provisions of this Constitution, the General Assembly is hereby authorized to provide by law for a program or programs of loans, scholarships, and grants, and the insuring of loans and payment of interest on loans to citizens of this State for educational purposes. The General Assembly is authorized to provide for all matter relative to such programs. Taxes may be levied and public funds expended for such purposes.*

Constitutional provisions permitting loan programs are particularly popular and have been adopted in such states as Maine, Massachusetts, Nebraska, Ohio, Texas and Virginia.

Where a state constitution has been amended along such specific lines, the new section may prevail, where applicable, over older and more general constitutional provisions. In a test case involving a new section (Art. VIII, § 11) of the Virginia Constitution authorizing loan programs for students in Virginia's private colleges, that State's Supreme Court held that the section (effective in 1971) prevailed, within the ambit of its area of authorization, over existing, more general constitutional provisions, such as those limiting appropriations to sectarian institutions.[13]

(2) Aid to private higher education is an active field, and constitutional amendments continue to be proposed and placed before the voters of the several states. Virginians, for example, voted in November 1974 to amend Article VIII, Section 11, which therefore permitted loans to students in nonprofit institutions of higher education in the Commonwealth, to authorize grants to such students and also to allow contracts with private colleges for services. In November 1975 the voters of Massachusetts will vote on a proposal which would amend Article XLVI of the Massachusetts Constitution to permit direct aid to private institutions of higher education.

(3) In some states, those who would frame programs of aid to private higher education have the benefit of recent judicial glosses on relevant

constitutional provisions. In Virginia, for example, there have already been two test cases involving statutes enacted under Article VIII, Section 11 of the 1971 Constitution.[14] In other states, however, one may find that the leading cases are rather early. In South Dakota, the leading case concerning the constitutionality of aid to sectarian schools was decided in 1891.[15] Obviously one must be wary in making assumptions about the weight which a court today would give to cases of such vintage.

(4) In contrast to the practice under the Federal Constitution, where Article III through its language of "case" or "controversy" is held to bar advisory opinions, some state supreme courts will render advisory opinions on the constitutionality of legislation. Note, for example, the liberal use in New Hampshire of "Opinions of the Justices." In such states one may find the state of the law better settled. Moreover, on the assumption that advisory opinions have weeded out more dubious proposals, programs which are on the statute books may be less open to constitutional attack.

(5) An enquiry into the law of any state is not complete without a careful survey of relevant attorney general opinions. Indeed in some states, opinions of the attorney general may be virtually all the relevant gloss there is to shed light on the constitutionality of particular kinds of programs. In some states an attorney general's opinion has, at least for state agencies, the force of law (unless a judicial opinion is to the contrary); in other states an attorney general's opinion is useful for its persuasive value only. In either event, such opinions should be researched as a matter of course.

(6) Where the issue is one of whether a program is compatible with the religion clauses of a state constitution, some state courts say explicitly that a program which will pass muster under the First Amendment to the Federal Constitution will stand under the state constitution. This position has been taken in Vermont, for example, in opinions of the Supreme Court of Vermont and of the State's Attorney General.[16] State courts often will assimilate a state constitution's religion provision to the First Amendment as interpreted by the United States Supreme Court, even though the state constitutional language may not be identical to that of the First Amendment. This is the thrust of a 1968 Rhode Island decision holding that a program of textbooks for students in parochial schools did not violate either the First Amendment or Article I, Section 3 of the Rhode Island Constitution.[17]

(7) On the other hand, state courts often note that the language of their state constitutions is more specific than that of the First Amendment. A 1970 Massachusetts decision, for example, takes this tack in comparing Article XLVI of the Massachusetts Constitution with the First Amendment.[18] State court interpretation of a state constitutional provision may invalidate a program which would be valid under the First Amendment. For example, the Supreme Court of Delaware, in a 1966 opinion, held that Delaware's Constitution would invalidate a program of schoolbus transportation for pupils attending private elementary and secondary schools.[19] The Court distinguished the United States Supreme Court's decision in *Everson v. Board of Education*[20] on the ground that the relevant Delaware provision (Article X, Section 3) was more explicit than the First Amendment.[21]

(8) In many states, there has been more litigation over aid to schools at

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the primary and secondary school level, especially parochial schools, than over programs at the level of higher education. One reason is that proposals to aid parochial schools have been afloat for decades, whereas public attention to the needs of private higher education is, for the most part, a development of recent years. Frequently one who proposes a program for higher education will find that the case law deals largely with parochial schools. How a state Supreme Court responds to constitutional challenges to a program at the college level may turn in good measure on the willingness of the state court to follow the lead of the United States Supreme Court in *Tilton* and *Hunt* and to be more receptive to a higher education program even though a comparable program at the secondary school level might be suspect.

(9) Even where a state court follows federal guidelines, one should be cautious in relying on state decisions which, following those guidelines, interpret a state program similar to one involved in a subsequent United States Supreme Court decision. For example, there is a 1971 Florida decision upholding a financing arrangement which was similar in many respects to the South Carolina plan upheld two years later by the United States Supreme Court in *Hunt v. McNair* but which lacked some of the limits regarding aid to sectarian functions built into the South Carolina statute.[22]

(10) The "child benefit" theory—that a particular kind of aid (schoolbus transportation, textbooks, etc.) may be viewed as aid to the child and only incidentally as aid to the institution he attends—can be helpful in upholding governmental programs touching private education.[23] Where a state's caselaw recognizes the child benefit theory—and by no means do all states subscribe to it[24]—a program of aid ought to be fashioned, if possible, so as to direct aid to the student and not to the institution. Child benefit states tend to be less restrictive than those that reject the theory.

(11) Traditions of relations between church and state vary significantly from one state to another, even among neighboring states. Such historical climates often tend to condition the posture in which the constitutionality of a governmental program is tested. Virginia, for example, is heir to a long tradition of separation of church and state, studded with such landmarks as Jefferson's Bill for Establishing Religious Freedom and Madison's Memorial and Remonstrance Against Religious Assessments. Correspondingly, Virginia's judicial decisions tend to relative strictness in questions of church and state.[25] By contrast, there are states having a strong religious orientation. It has been observed, for example, that Tennessee has maintained a fundamentalist religious atmosphere (the statute upheld in the 1925 Scopes trial remained on the statute books until 1967),[26] and in such states it would be reasonable to suppose that interpretation of the state constitution's religion provisions might be less strict.

(12) In some of the Southern states, constitutional amendments and judicial decisions responding to federal initiatives (following *Brown v. Board of Education*) requiring desegregation of public schools may be helpful to advocates of aid to private higher education. Georgia's Constitution, for example, was amended in 1954 (Art. VII, § 13) to permit educational grants to Georgia citizens regardless of other constitutional provisions

Query, however, whether Southern state court decisions—especially those

of the 1950s and early 1960s influenced by sympathy for resistance to court-ordered public school integration would have full force today. In a 1959 decision, for example, the Supreme Court of Florida gave a liberal construction to the State Constitution's provision authorizing property tax exemptions. The Court obviously had an eye to current events, as it related that

> *history tells us that both immediately before, as well as during the dark days of the reconstruction period following the War between the States, the students of Florida received their education primarily in private schools. Current events portend that history in the making is about to repeat itself. Coercive writs emanating from courts in the Federal System are gradually wresting from the respective states of this nation the control and management of their public school systems. Forced compliance with social philosophies repugnant to the mores of our citizens is now being required in public school administration. As a result our State Legislature is presently engaged in the consideration of laws which will permit the compulsory closing of our public schools, and provide a subsidy with which students may attend private schools of their choice. Under existing circumstances sound reason dictates that our laws should not be construed in such a narrow fashion as to discourage the continuance or impede the establishment of the very private schools on which our students may soon be forced to depend for an education.*[27]

Whether such judicial attitudes persist into the 1970's or not, constitutional amendments (such as the 1954 Georgia amendment) remain as useful vehicles for aid to private education, quite independently of the opposition to public school desegregation which may have been the occasion for their adoption. Note, however, that should aid be channeled to schools which discriminate on the basis of race, the United States Supreme Court has noted that, where race is involved, the Fourteenth Amendment's equal protection clause is interpreted to impose a stricter bar to state assistance than would be the case were the question one of establishment under the First Amendment.[28]

(13) Where the state constitutional question is whether a program of aid to private higher education is compatible with a provision forbidding lending of the State's credit, there is commonly a good deal of case law interpreting a lending of credit provision. The result in a particular instance may turn on the extent to which a state court will be willing to give a liberal interpretation to the clause in modern contexts not related to the evils (usually internal improvements such as railroads and canals) which gave rise to the provision. The Minnesota courts, for example, seem willing to take this liberal approach.[29]

Lending of credit prohibitions may be avoided by the use of devices, such as revenue bonds, which do not involve the State's credit. Thus the Supreme Court of South Carolina found no violation of that State's lending of credit clause (Art. X, § 6) in the creation of a state authority to issue revenue bonds to assist institutions of higher education in South Carolina.[30]

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(14) Where the state constitutional provision is one which prohibits the appropriation of money to private undertakings, strict enforcement of this kind of prohibition means that such an appropriation will be struck down even though it might be argued to have a "public purpose." The New Mexico Supreme Court, for example, has given a strict interpretation to the mandate of the New Mexico Constitution (Art IX, R, 14) that neither the State nor its political subdivisions may make "any donation to or in aid of any person, association, or public or private corporation . . . ."[31] Illustrative of the strictness of this section is the remarkable specificity of the proviso, added in 1971, to authorize a scholarship program for Vietnam veterans attending educational institutions under the exclusive control of the State.

The above observations may give some notion of the range and variety of interpretative problems which those who advocate programs aiding private higher education may encounter under state constitutions. The First Amendment and other federal limitations may have some slippery nuances, but at least the guidelines are of a national character. State constitutional limits, by contrast, though they may present some patterns common to more than one state are ultimately peculiar to a particular state. That is why attempts to draft "model" legislation would be of little avail, and it is a reminder that the draftsman pick his way carefully, his eye over one shoulder to the Federal Constitution and over the other to his state charter.

FOOTNOTES TO CHAPTER II

[1]Lemon v. Kurtzman, 403 U.S. 602 (1971).

[2]Tilton v. Richardson, 403 U.S. 672 (1971).

[3]403 U.S. at 685-88.

[4]413 U.S. 756 (1973).

[5]413 U.S. 734 (1973).

[6]413 U.S. at 746.

[7]"[T]he burden rests on appellant to show the extent to which the College is church-related, . . . and he has failed to show more than a mere formalistic church relationship. As *Tilton* established, formal denominational control over a liberal arts college does not render all aid to the institution a violation of the Establishment Clause," Hunt v. McNair, 413 U.S. 734, 746 n. 8 (1973).

[8]403 U.S. at 679.

[9]413 U.S. at 736, 737.

[10]E.g., Va. Const., Art. X, § 10; Ala Const., Art. IV, § 93.

[11]E.g., Alaska Const., Art. IX, § 6.

[12]E.g., Hawaii Const., Art. IX, § 1.

[13]Miller v. Ayres, 213 Va. 149, 191 S.E. 2d 261 (1972).

[14]Miller v. Ayres, 213 Va. 149, 191 S.E. 2d 261 (1972); Miller v. Ayres, 214 Va. 171, 198 S.E. 2d 634 (1973).

[15]Synod of Dakota v. State, 2 S.D. 366, 50 N.W. 632 (1891).

[16]See Swart v. South Burlington Town School Dist., 122 Vt. 177, 167 A.2d 514, *cert. denied*, 366 U.S. 925 (1961); 1968-70 *Ops. Vt. Att'y Gen.* 258 ("if the plan . . . passes the test of the United States Constitution, then *a fortiori* it passes the test of the Vermont Constitution").

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[17]Bowerman v. O'Connor, 104 R.I. 519, 247 A.2d 82, 83 (1968).

[18]Opinion of the Justices, 357 Mass. 836, 258 N.E.2d 779, 782 (1970).

[19]Opinion of the Justices, 216 A.2d 668 (Del. 1966).

[20]330 U.S. 1 (1947)

[21]The Delaware Constitution was amended in 1967 to provide specific authorization for the free transportation of students in nonpublic, nonprofit elementary and high schools. Del. Const., Art. X, § 5.

[22]Nohrr v. Brevard County Educ. Facilities Auth., 247 So.2d 304 (Fla. 1971).

[23]See Everson v. Board of Educ., 330 U.S. 1 (1946).

[24]For examples of decisions rejecting the child benefit theory, see, e.g., Board of Educ. v. Antone, 384 P.2d 911 (Okla. 1963); Opinion of the Justices, 216 A.2d 668 (Del. 1966) (the specific holding of the Delaware decision, holding that a schoolbus transportation program for pupils in nonpublic schools would violate Del. Const., Art. X, § 3, has been overturned by a 1967 amendment to the Delaware Constitution—Art. X, § 5).

[25]See Almond v. Day, 199 Va. 1, 97 S.E.2d 824 (1957).

[26]Anson P. Stokes, *Church and State in the United States* (New York, 1959), II, 598.

[27]Simpson v. Jones Business College, 113 So.2d 760, 765 (1959).

[28]Norwood v. Harrison, 413 U.S. 455, 470 (1973).

[29]See City of Pipestone v. Madsen, 287 Minn. 357, 178 N.W.2d 594 (1970).

[30]Hunt v. McNair, 177 S.E.2d 362 (S.C. 1970), *aff'd*, 413 U.S. 734 (1973).

[31]See Harrington v. Atteberry, 21 N.M. 50, 153 P. 1041 (1915); Hutcheson v. Atherton, 44 N.M. 144, 99 P.2d 462 (1940).

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CHAPTER III

Types of State Aid: General Characteristics

Viewed from a national perspective, state aid legislation employs varied (and sometimes conceptually involved) mechanisms for channeling assistance into the private sector of higher education. Basically, however, such assistance may be classified in terms of two irreducible categories: (1) assistance directly involving the institution, and (2) assistance directly involving the student. Assistance in this sense normally means some sort of financial support for the institution or student, but can also mean institutional relief from otherwise requisite expenditures, such as sales and other tax exemptions, or access to state administrative services such as the purchasing office.

This report is concerned exclusively with state aid in the sense of financial support. It covers general characteristics nationally, and detailed features by individual states (i.e., funding formulas, funding levels, objectives and restrictions, etc.). The general characteristics of both institutional and student support programs are outlined in this chapter, and their respective details are presented in the two succeeding chapters.

Institutional Support Programs

A total of nineteen states provide one or more major forms of institutional support to private institutions of higher education.[1] These forms include contracts for various kinds of educational services (13 states);[2] facilities bonding authorities (11 states); and formula-based grants to operating budgets (8 states).[2] Seven states have at least one such program, and twelve have two or more.[2]

Service Contracts. "Contract colleges" are an established tradition in this country, in which individual private institutions have entered into agreements with state or federal governments, or with regional agencies, to provide certain services not otherwise available. The current popularity of this approach is probably due in part to this tradition, but also in part to analogous state contracts with other nonpublic agencies such as hospitals. Additionally, since the state is purchasing these services, the attendant concept of "payment for services rendered" undoubtedly helps to blunt the prejudicial connotations of "state aid" mentioned at the beginning of Chapter I.

[1] See Chart A, page 32.

[2] The distinction between service contracts and formula grants is not always clear-cut, since at least two states have programs which incorporate features (or at least the language) of both. These overlapping features do not affect the total number of states reported to have institutional support programs.

The following are the general types of contract services to be found among the thirteen states with contract programs:

1. Contracts for increased numbers of state residents in private college classes. Such contracts are generally unrestrictive as to program areas.
2. The purchase of educational opportunities for state residents in specific high-cost specialized programs such as medicine, dentistry, nursing, law, etc.
3. The purchase of computer and library services which would be expensive and duplicative if developed in a public institution when already available in the private institution.

Among the three, the first sometimes overlaps with formula grants and is probably the most difficult to justify politically. Yet it is the most pertinent to the needs of undergraduate colleges.

Facilities Assistance. Facilities assistance programs are normally provided through state-legislated bonding authorities that enable the private institutions to borrow for construction from funds generated by tax-free bonds. The institution must usually pledge appropriate types and amounts of current revenue for payment of principal and interest, and title to the facility is usually retained by the state agency until the issue is retired. Although such authorities are here classified as a type of assistance involving direct financial support, the advantages they provide are also analogous to "indirect support" (such as tax exemptions or access to state administrative services), in that the program results in cost benefits (i.e., lower interest rates) to the institution that it could not otherwise acquire.

Formula Grants. Formula grants involve the most direct approach of all to the question of institutional support and, as previously noted, are probably for that reason the least prevalent of the major types of assistance directly involving institutions. Their general characteristics may be summarized under two headings, the first involving two variations on the basic formula:

1. Financial assistance based upon institutional headcount (or in a few instances FTE) enrollment. There are two basic variations within this approach:
   a. A formula which specifies a fixed and equal sum of money for each student enrolled above an arbitrary base-year enrollment.
   b. A similar formula which differentiates between lower-division and upper-division students and allocates a larger sum for each upper-division student.
2. Financial assistance based upon degrees awarded. Here a fixed sum of money is granted for each degree conferred. A differential may be applied for the type or level of degree (e.g., A.A., B.A., M.A., Ph.D.).

Other Programs. The foregoing account of major programs of institutional support, particularly as they pertain to direct income for the institution (contracts and formula grants), would not be complete without mentioning at least two other programs whose general characteristics do not coincide

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precisely with the contract or formula grant categories. One, which shall be referred to in the next chapter as a "trailer grant," involves funds which private institutions in two states receive in conjunction with, or as part of, a package of funding for student aid. Typical legislative specifications for trailer grants provide that the bulk of funds must go to student aid but that up to a fixed percentage may be retained as current fund revenue. They are classified as "formula grants" in Chart A at the end of this chapter.

The second is mentioned, not especially because of any guidelines it provides for other states, but rather because it is a very substantial program involving at the current time state funding in excess of $31,000,000. In terms of general characteristics specified in this chapter, it is very definitely a grant, but one for which no formula is prescribed. This is the Pennsylvania program for "state-related" and "state-aided" colleges, and requires that funds to the former must be used to prevent tuition increases, whereas funds to the latter are to be directed toward programs that will benefit the state. In Chart A at the end of this chapter, the program is classified as "Other".

Undoubtedly, there are other miscellaneous types of programs, such as the one in New York which provides for state funds to endow chairs for distinguished scholars at private institutions. Statistics for such programs are not presented in this report.

Student Aid Programs

This aspect of the report is concerned with student support for *undergraduate* education. A variety of program options has been established at the state level for providing financial support to meet student costs. A survey of state legislation reveals that, in terms of general characteristics, they may be classified in three generic categories as (1) scholarships, (2) grants, and (3) loans.[3] Chart B at the end of this chapter identifies those states which have loan programs in addition to one or more of the options classified in the first two categories. Chapter V provides additional information on loan programs.

Rationale. The rationale underlying most, if not all, state programs which provide student support is either (1) *increased student access* to higher education as such, or (2) *increased freedom of choice* among both public and private institutions. Secondary and related aims may be to maintain the fiscal viability of private sector institutions, or to conserve and more efficiently utilize total state resources for higher education.

Whatever the aim, however, one of the operational problems which any such program ultimately faces is the issue of student *financial need*. In its most simplified form, financial need is the difference in monetary terms between student charges at an institution of the student's choice and the amount of money the student and his family can reasonably be expected to contribute toward those charges.

[3]In subsequent sections of this chapter, as well as in Chapter V and Appendix B, grants are divided into additional subcategories. Loan programs receive only minimum consideration in this report, for reasons discussed in Chapter V.

Mechanisms. Thus, student aid mechanisms will vary basically in accordance with differing emphases with respect to rationale. This in turn will generate differing calculations of the student need factor. If the aid is designed to increase access to higher education, certain consequences follow. If the aim is *freedom of choice*, different results may be expected. While these options are not mutually exclusive, there are differences in the implications of each and in the mechanisms of any plan designed to implement one or the other.

The *1973 Report on Model Student Assistance Programs for Kentucky* provides a relevant discussion of the equal access/freedom of choice dichotomy.

> *Freedom of choice of institutions vs equal access to education is central to all student aid programs, and, in particular, to those operated by state agencies. The goal orientation of student aid programs seeks out some place on the continuum that runs from freedom of choice in institutions to equal access to post-secondary education.*
>
> *Essentially, a freedom of choice program provides that, under all circumstances, a student who chooses a high-cost education can obtain more aid than if he or she had chosen a lower-cost institution. A more widely used device in a model of this nature is to limit the amount of the award to a sum not exceeded by a fixed limit, usually $1,000 or more, or tuition (whichever is the lesser) or the amount of remaining need if less than the maximum or the tuition costs. Under a model of this type, a student from a relatively affluent family can receive more assistance to attend a high-cost institution than a student from the most impoverished background can receive to attend a low-cost institution.*
>
> *An equal access to education program starts with the premise that it is more important that students from the lower economic strata receive help to attend a post-secondary educational institution, which will generally meet their educational requirements, than to induce them to seek out a higher cost education. Therefore, when assessing need for assistance, all students will have their need structured upon the costs of attending an institution which costs no more than the most costly public institution.*

Setting limitations on individual stipends, typically one-half of demonstrated need up to a predetermined maximum (e.g., $1,000-$1,200 per year), enhances access. Using the total cost of attendance in determining need tends to enhance freedom of choice. Scholarship programs which select recipients on the basis of academic ability enhance freedom of choice for high-ability students; whereas, grant-in-aid programs facilitate the equal access option because they tend to favor the less affluent. Many states have multiple aid programs in order to meet the dual access/choice objectives defined above.

Approaches. Five principal approaches to student support have been identified from a national survey of current legislation: (1) scholarship programs, (2) grant programs based on need, (3) grant programs not based on need, (4) educational incentive programs for the disadvantaged and (5) major loan programs. Although the first three appear to be distinctly separate

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approaches, a review of the legislation indicates that the difference between scholarships and grants is at times a matter of semantics. Therefore, the reader should normally evaluate the substance of the legislation rather than its title in order to identify its aim. Otherwise, though, the programs are all but self-explanatory.

State summary. As previously noted, an increasing number of states are developing multiple and complementary aid programs designed to meet diverse student needs. All in all, 33 states have at least one program involving one or more of the foregoing approaches.

The most commonly employed program by far is the grant program based upon student need. Twenty-four states have programs of this type. Eighteen states operate scholarship programs, while eleven states operate both scholarship programs and need-based grant programs. Slightly less than one in ten states have grant programs not based on need.

Five states have educational incentive programs for the disadvantaged and, in general, operate these programs in tandem with either the scholarship or need-based grant program. For example, three of the five states operate, besides the educational incentive programs, both scholarship and need-based grant programs. Over all, sixteen states have multiple programs of student financial aid.

Chart B presents a summary of the types of major student aid programs employed by the states. The loan programs identified in this chart focus on programs that are state funded and administered. It is not intended as an exhaustive accounting of all loan programs that may be available.

General comments. In total perspective, the student support approach to state aid for private sector institutions is far more prevalent than the institutional support approach, in terms of numbers of states, numbers of program options, and total levels of funding. For example, only nineteen states (as noted above) have currently operative institutional support programs, whereas every one of these states, plus fourteen others, have also enacted or augmented student support legislation. Total funds available for institutional support programs (exclusive of specialized service contracts and facilities assistance programs) are now approaching $76.7 million among nine states; whereas available student support funds (exclusive of loans) approach $364.3 million among 33 states.[4]

The student support figure, must, of course, be qualified by the observation that not all such funds are available for the exclusive use of private college students; Table XI, Appendix B indicates, according to the latest available data, that student support funds applicable to the private sector alone amounted to $37.3 million in 1973-74. Nevertheless, the remainder is not unavailable to the private sector since all programs covered in this report are, at the very least, applicable to both public and private sector institutions.

[4]The dollar totals are provided for comparative purposes only and should not be viewed as verified or audited totals actually available for a given period of time, say, fiscal 1973-74. Some individual reports received during the survey listed "funding levels" for a biennium, others for a fiscal year, and still others submitted figures that would become available for the next fiscal term, whether year or biennium.

Chart A

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A Summary of Major Programs of Institutional Support

State	Contracts	Formula Grants	Facilities Assistance	Other
1. California	X		X	
2. Connecticut	X[5]	X[5]	X	
3. Illinois		X	X	
4. Massachusetts	X		X	
5. Maryland		X		
6. Michigan	X	X	X	
7. Minnesota		X	X	
8. New Jersey		X	X	
9. New Mexico	X			
10. New York		X	X	
11. North Carolina	X			
12. Ohio	X		X	
13. Oregon	X[5]	X[5]		
14. Pennsylvania	X[6]			X
15. South Carolina	X		X	
16. Tennessee	X			
17. Texas	X			
18. Virginia			X	
19. Wisconsin	X			

[5]Involves a single program with overlapping features.

[6]Not currently operative.

Chart B

A Summary of Major Programs of Student Aid

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	State	Scholarship Programs	Grant Programs Based on Need	Grant Programs Not Based on Need	Educ. Opp. Programs for the Disadvantaged	Loan Programs
1.	Alaska			X		X
2.	California	X			X	
3.	Connecticut	X				
4.	Florida		X			X
5.	Georgia			X		
6.	Illinois	X				
7.	Indiana	X	X			
8.	Iowa	X	X			
9.	Kansas	X	X			
10.	Kentucky	X	X			X
11.	Maine		X			
12.	Maryland	X				
13.	Massachusetts		X			
14.	Michigan	X	X			
15.	Minnesota	X	X			X
16.	Missouri		X			
17.	New Jersey	X	X		X	

Chart B (Continued)

A Summary of Major Programs of Student Aid

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	State	Scholarship Programs	Grant Programs Based on Need	Grant Programs Not Based on Need	Educ. Opp. Programs for the Disadvantaged	Loan Programs
18.	New York	X	X		X	
19.	North Carolina		X			
20.	North Dakota		X			
21.	Ohio		X			
22.	Oregon	X	X			X
23.	Pennsylvania	X			X	
24.	Rhode Island	X				
25.	South Carolina		X			
26.	South Dakota		X			
27.	Tennessee		X			
28.	Texas		X			
29.	Vermont	X	X			X
30.	Virginia		X			X
31.	Washington		X			X
32.	West Virginia	X				
33.	Wisconsin	X	X		X	

CHAPTER IV

Institutional Support Programs

As noted in Chapter III, institutional support programs are dominated by contracts, facilities assistance programs and formula grants, in that order. Though numerically the smallest category, formula grants are probably the most significant in terms of potential for increasing the effectiveness of the state aid effort on a national scale. On the other hand, they are also the most politically controversial among states with little or no history of cooperative relationships between government and private institutions.

For those reasons, among others,[1] it seems appropriate to maintain a primary focus in this chapter, on formula grants which in one form or another are currently operative in nine states.[2] Table I on the next page indicates the state-by-state distribution of these programs according to the subcategories of "capitation grants" (i.e., formulas based on institutional headcount or FTE enrollment), "degree reimbursement grants," "trailer grants," and "other."[3]

Table III at the end of this chapter provides more complete descriptions of these programs, including funding formulas, funding levels, and restrictions, if any. The remaining text of this chapter presents selective highlights of the formula grant programs, as well as summary descriptions of contracts for specialized services and facilities assistance programs.

Of the five states that operate capitation grant programs, according to Table I on the next page, three (Maryland, Minnesota and Oregon) do not differentiate between lower and upper division in computing per-student grants. Table III indicates that the funding level in these states is substantially lower than in the other two (Illinois and New Jersey), even considering other variables such as differences in amount of per-student grants.

[1]E.g., data that are more accessible and more easily reducible to tabular display, as well as generally more pertinent to institutional support for undergraduate education.

[2]The previous chapter identified only eight states. See Table I and Footnote 9 on the next page concerning Pennsylvania.

[3]See previous discussion of general characteristics, Chapter III, p. 27.

BEST COPY AVAILABLE Table I

State Distribution of Formula Grants

A.	Capitation Grants	Illinois, Maryland,[4] Minnesota,[5] New Jersey,[6] Oregon[7]
B.	Degree Reimbursement Grants	Michigan, New York
C.	Trailer Grants	Connecticut,[8] Minnesota,[5] New Jersey,[6]
D.	Other	Pennsylvania[9]

The programs in Maryland, Minnesota and Oregon also illustrate other refinements which can have a significant impact on funding levels. Under the Maryland program, the state's sixteen private colleges will initially receive an award of $138 per undergraduate enrolled; this figure will increase to and stabilize at $243 per student during the next fiscal year.[10]

Minnesota's program, although undifferentiated with respect to lower and upper division, distinguished between institutions which award associate degrees only and those which award degrees at the baccalaureate level.[11] Oregon's program is limited to students registered in nonsectarian course work and provides for a uniform per-student award of $250 for every 45 quarter hours (or its equivalent) of course work completed.

Degree reimbursement. Both Michigan and New York operate degree reimbursement programs. Payment is based on the number of graduates per

[4]Effective in the 1974-75 fiscal year

[5]Although a capitation grant, the legislative title is "Private College Contract Law," and has partial features of a trailer grant (see footnote 11).

[6]Includes two programs, each of which is both a capitation and a trailer grant.

[7]A capitation grant that includes the term "Contract" in the legislative title.

[8]Primarily a trailer grant, but legislatively designated a contract.

[9]See discussion of general characteristics, Chapter III, p. 27. Included as a formula grant for narrative expediency only.

[10]This figure represents approximately 15% of per-student expenditures in Maryland's public colleges and universities.

[11]Baccalaureate institutions receive $500 for each student enrolled, plus an additional $500 for each low-income state grant recipient enrolled. Associate degree institutions receive $400 per student.

year, with a differential applied for each type of degree conferred. In Michigan, for example, the state's schedule of payments is $200 per associate degree, $400 per bachelor's degree, and $400 per master's degree. The state of Michigan also restricts the maximum allocation that an individual institution may receive to 15 per cent of its education and general expenditures. New York State's current schedule is $300 per associate degree, $800 per bachelor's degree, $600 per master's degree, and $300 per doctorate.

Trailer grants. Connecticut's formula program is based on a contractual agreement between the private institution and the state to provide additional space for full-time and part-time undergraduage residents. Each participating private college must agree that 80 per cent of the funds received under this program will be expended for student financial assistance. The remaining 20 per cent may go into the college's or university's general fund with no restrictions placed upon its use. The average grant per student, however, may not exceed an amount equal to one-half of the difference between the average cost to the state for educating full-time undergraduate students in public institutions (inclusive of tuition charges levied by the public institutions) and average tuition charges in private institutions. Programs of this type are most appropriately classified as trailer grants because a certain percentage of the grant may be used by the institution without restriction. For example, in the preceding illustration, 80 per cent of the total grant awarded to the private colleges and universities must be expended for student aid, while the remaining 20 per cent of the funds may be considered a "trailer grant" which the private institutions may use for whatever purpose they deem necessary or appropriate.

Previously New Jersey's comprehensive *Independent Colleges and Universities Utilization Act* was characterized as a capitation grant, although one provision of that act (contracts to make educational services available to New Jersey students) could conceivably be considered a trailer grant. The form employed in the computation of this two fold grant program specifies that 50 per cent and 75 per cent of the funds provided respectively must be expended to lower the effective cost of education to New Jersey students. The remainder of the grant, 50 per cent and 25 per cent respectively, may be used by the private institutions without restriction.

Other. The State of Pennsylvania has traditionally provided direct financial assistance to twelve of its independent institutions which have been referred to either as state-related or state-aided private institutions of higher learning. In the state-aided institutions, the financial assistance is focused on programs which will benefit the state. Aid to the state-related institutions is directed toward meeting institutional costs with the objective of preventing tuition increases or, at least, of keeping such increases to a minimum.

Contractual Programs for Specialized Services

The developing contractual relations programs involving states and private institutions are as diverse as are the needs and strengths of the private institutions, the needs of the states to purchase the services of those institutions, and the constraints and opportunities provided by state

constitutions. The motivation for these programs includes state need for specialized and/or high-cost programs or services available at the private institutions and not available at public institutions within the state. Through development of contractual relations programs with private institutions, the state achieves a measure of economy through acquiring needed services without investment in facilities and equipment.

Eleven states have developed specialized service contracts with private institutions of higher education. The states and the major services or programs contracted for are listed in Table IV at the end of this chapter.

It is evident from the listings in Table IV that the majority of contract programs between the states and private institutions fall into the areas of medicine, dentistry and allied health fields. Programs such as those in California and Tennessee have as a goal the increasing of in-state enrollment, recognizing that existing private institutional facilities and staff would be expensive to duplicate in a public institution. A similar rationale can be cited in the other states.

The Ohio contract for specialized services has a dual method of meeting state needs for programs not available at public institutions. Effective July 1, 1974, the Ohio Board of Regents, on behalf of the state, was authorized to disburse funds to *state-assisted* institutions of higher education to purchase programs or services from *private* institutions; or the Board of Regents itself may contract for such services. The Board of Regents of Ohio, on behalf of the state, also administers a program of financial assistance in support of the medical and dental instructional programs at Case Western Reserve University in which the state subsidy per full-time student may not exceed the state support of similar students at state-assisted institutions of higher education.

In addition to these specific in-state contractual relationships the development of regional consortia serves as a vehicle for expanded purchase of private institutional services by state agencies as typified by the New Mexico citation in Table IV.

Facilities Assistance

State assistance in providing mechanisms for private institutions to borrow funds for facilities construction is a form of state aid in eleven states. This mechanism is provided through a facilities bonding authority which enables private institutions to borrow funds on the basis of tax-free bonds for construction. The eleven states which have such programs are listed below.

Table II

States with Facilities Assistance Programs for Private Colleges and Universities

California	Michigan	Ohio
Connecticut	Minnesota	South Carolina
Illinois	New Jersey	Virginia
Massachusetts	New York	

While the bulk of the programs are designed to provide a means of constructing academic facilities at private, or public and private, institutions in the eleven states, Minnesota and New York, among others, also provide for the renovation or remodeling of existing facilities through the bonding authority.

In addition to the above eleven states which have legislated regular mechanisms to assist private institutions in facilities construction, the State of Maryland has at times over the years passed special legislation to enable the provision of state grants to specific private institutions for facilities construction.

Alabama, although not considered in this chapter, has also provided appropriations for the maintenance and support of Marian Institute, Tuskegee Institute, and Walker Junior College for 1972-74. The Alabama Constitution prohibits aid to institutions not under absolute state control, except by a vote of two thirds of all members elected to each house of the state legislature. Therefore, the appropriations to the three institutions receiving aid are not considered an ongoing commitment. These funds can be used for facilities construction or renovation.

Table III

Institutional Support Programs

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State	Program Name	Type of Grant	Funding Formula	Funding Level, Fiscal 1973-4	Restrictions
Connecticut	Program of State Aid to Students at Independent Colleges	Trailer	Contractual agreements with the private institutions to provide additional space for full and part-time undergraduate residents.	$2,080,942	80% of funds received by the private colleges must be expended for student aid.
Illinois	Illinois Financial Assistance Act for Nonpublic Institutions of Higher Learning	Capitation	Financial assistance based upon institutional enrollment differentiated by lower and upper division students: Lower division: $100 per student Upper division: $200 per student	$6,000,000	Tuition and fees only
Maryland	Aid to Nonpublic Institutions of Higher Education	Capitation	Financial assistance based upon institutional enrollment: $243 per student	$5,900,000*	Must be used for student aid.

*This figure represents tequested funding for fiscal year 1974-75. The state of Maryland, effective July 1, 1974, will conbert form its present Degree Reimbursement program to that outlined above.

Table III (Continued)

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Institutional Support Programs

State	Program Name	Type of Grant	Funding Formula	Funding Level, Fiscal 1973-4	Restrictions
Michigan	Degree Grants	Degree Reimbursement	Financial assistance based upon number and type of degree conferred: A.A: $200 B.A.: $400 M.A.: $400	$1,900,000	None specified.
Minnesota	Private College Contract Law	Capitation	Financial assistance based on institutional enrollment in excess of 1970 base year defferentiated by level of institution. Bachelor degree granting institution: $500 per student Associate degree granting institution: $400 per student	$2,900,000	None specified.

Table III (Continued)

Institutional Support Programs

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State	Program Name	Type of Grant	Funding Formula	Funding Level, Fiscal 1973-4	Restrictions
New Jersey	Independent Colleges and Universities Utilization Act	Capitation and Trailer	(1) Cost of Education Grants (COG): $300 per student enrolled during previous academic year who was a recipient of financial aid. (2) State Program to Utilize Resources (SPUR): (a) $600 per student enrolled in excess of the previous academic year. (b) $175 per lower division student. $225 per upper division student.	$8,700,000	None specified. (a) 50% of these funds must be used to lower the effective cost of education to New Jersey students. (b) 75% of these funds must be used to lower the effective cost of education to New Jersey students.

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Table III (Continued)

Institutional Support Programs

State	Program Name	Type of Grant	Funding Formula	Funding Level, Fiscal 1973-4	Restrictions
New York	Bundy Aid plan	Degree Reimbursement	Financial assistance based upon number and type of degree conferred: A.A.: $300 B.A.: $800 M.A.: $600 Ph.D.: $3,000	$15,000,000	None specified
Oregon	Contracts with private Institutions for Nonsectarian Educational Services	Capitation	Financial assistance based upon institutional enrollment. Payment determined on a uniform rate of $250 for every 45 quarter hours or equivalent.	$3,200,000*	None specified
Pennsylvania	Aid to State-Related and State-Aided Institutions	Direct Institutional Aid	Direct financial assistance to 12 private institutions of higher education.	Approximately $31,000,000	(1) State-Related: Must be used to prevent tuition increases. (2) State-Aided: Funds are directed toward program that will benefit the state.

*For fiscal year 1974-75.

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Table IV

States with Contracts for Specialized Services

	State	Service or Purpose
1.	California	Contracts to increase medical school enrollment.
2.	Massachusetts	Contracts between NBHE and Tufts for physical and occupational therapy students.
3.	Michigan	Contracts for dental and law school services.
4.	New Mexico	Contracts with out-of-state dental schools.
5.	North Carolina	Contracts regarding administration of state scholarships.
6.	Ohio	Contracts with private institutions to provide programs not available at public institutions.
7.	Pennsylvania	Contracts (not operating).
8.	South Carolina	Contracts for private institutions to provide in-service programs for teachers.
9.	Tennessee	Contracts with private medical schools to increase in-state enrollment.
10.	Texas	Contracts with Baylor Medical and Dental Schools and Texas College of Osteopathic Medicine.
11.	Wisconsin	Contracts for dental education.

CHAPTER V

Student Support Programs

In Chapter III, the general characteristics of state programs[1] for student support were described. Chart B at the end of that chapter summarized the distribution of program options[2] among thirty-three states with currently operative programs. The present chapter expands upon the foregoing review in several dimensions.

First of all, the status of student support legislation, if any, is briefly examined for the remaining seventeen states without currently operative programs. The primary focus, however, is upon salient patterns of current programs that reveal legislative intent concerning student support in the private sector. Table VII at the end of the chapter presents in tabular array the more significant features of each program option among all 33 states with current programs. Finally, Appendix B presents selected highlights of current grant and scholarship program options.

States Without Currently Operative Programs

Of the seventeen states without operative programs, two[3] have enacted student support legislation, and three[4] have introduced such legislation. The remaining twelve states[5] do not have, nor do they anticipate the introduction of, such legislation.

In Nebraska, a grants program for equalizing tuition was enacted in 1972, but was subsequently challenged and ruled unconstitutional in a lower court.[6]

[1]In this chapter, a "state program" means the sum of all legislation enacted and administered by an individual state for student support.

[2]"Program Options" refer to the type of support available singly or in various combinations (i.e., scholarships, grants and loans) within an individual state program.

[3]Nebraska and Oklahoma.

[4]Delaware, Mississippi and Idaho.

[5]Alabama, Arizona, Arkansas, Colorado, Hawaii, Louisiana, Montana, New Hampshire, New Mexico, Nevada, Utah and Wyoming.

[6]The adverse decision on Nebraska's program has since been upheld by the State Supreme Court.

The Oklahoma program was enacted in 1971 but only funded this year.[7] Delaware's proposed legislation, if passed, will create a competitive scholarship program directed toward the private sector. Scholarships not exceeding $800 per student per year will be awarded on the basis of academic ability and financial need. Additionally, students must be enrolled in programs or courses of study for which there is a reasonable expectation of job entry once the program is completed.

In Mississippi, the proposed legislation would create a tuition assistance program directed toward students attending independent colleges and universities, as well as those attending private and parochial elementary and secondary schools. The tuition assistance award would be noncompetitive, and the amount of the award would be determined by subtracting $800 from the "average pupil appropriation" for the public senior colleges and universities, while $400 would be substracted from the "average pupil appropriation" for junior colleges.

Senate Bill 1412 in Idaho, if passed, will create a scholarship program with awards based on academic ability.

Patterns of Student Support

As noted in Chapter III, the underlying rationale of student support programs is increased access and freedom of choice with respect to higher education as such, and not necessarily with respect to private institutions as such. Yet there are patterns involving each alternative which suggest (1) that the programmatic approaches to increased access while tending to favor public institutions, do not rule out private institutions, and (2) conversely for freedom of choice (i.e. more favorable to private institutions).

In other words, if one closely examines the programmatic features of current legislation, certain characteristic patterns emerge suggestive of a legislative intent to be as responsive as possible to private sector needs for increased enrollments, while attending to the primary needs of students for increased access or freedom of choice. Evidence of this intent, generally persuasive and sometimes conclusive, appears in such factors as descriptive legislative titles[8] and particularly in the kinds of options constituting a single state program, together with their accompanying legislative constraints (e.g.,

[7]Oklahoma's program, entitled *Higher Education Tuition Aid Act*, is a need-based grant program with $500 stipends for full-time students. It appears that both private and public institutions are eligible under the act. The 1974 legislature authorized funding in the amount of $300,000. This information was received too late for inclusion in tabular summaries.

[8]Grants for "Tuition" or "Tuition Equalization" are common aspects of recent legislative titles; and in two instances there is legislation which provides "grants and scholarships to students attending private colleges," and "contracts to allow private institutions to administer state appropriated scholarships to needy . . . students."

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eligibility criteria and maximum stipends). The following paragraphs select a few key patterns to illustrate the point.

Program options. The most basic distinction among individual state programs is the "multiple" *vs* "single" option pattern. Seventeen out of 33 states operate programs with two or more options, and the remaining sixteen have only one option. Table V below presents the type and frequency of the options for each pattern.

Table V

The Pattern of Program Options for 33 State Programs

	No. of States
A. Multiple Option States	17
a. Grants and Scholarships	9
b. Grants and Loans	4
c. Grants, Scholarships and Loans	4
B. Single Option States	16
a. Grants	11
b. Scholarships	5
c. Loans	0

Among all states, grants are the most common option (28 states), scholarships the next (18 states) and loans the least common (8 states). With respect to the first two types, grants are normally need-based, and scholarships frequently so, whereas they differ otherwise only in that the latter are academically competitive.[9] Considered in themselves, student eligibility criteria for these awards suggest that legislative intent is primarily concerned with equality of access, and is thus not particularly concerned with access to private sector education as such. But when *student eligibility* for grants and scholarships is considered together with *institutional eligibility* for any option, a more balanced intent emerges: nine out of seventeen multiple-option states provide at least one program option for attendance at private institutions only. More significantly perhaps, the same holds true for five of the sixteen single-option states; in other words, the *only* state-administered program option in each of these five states is for attendance at private colleges.

[9]As previously noted, the legislative distinction between a grant and a scholarship can sometimes be a matter of semantics. For consistency, therefore, this report always classifies an academically noncompetitive award as a "grant" even thought it may be designated a "scholarship," and conversely, an academically competitive award is always classified as a "scholarship."

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Perhaps just as significant as a negative revelation of legislative intent is the comparative *infrequency* of loans as a program option among all states. Only eight out of seventeen multiple-option states provide for loans at all, and not one single-option state apparently considers loans an acceptable approach to equalizing access, much less to stimulating private college enrollments. The most likely reason to assign to this state of affairs is that, with respect to equality of access, loans are a positive hindrance for low-income students, and with respect to private higher education, loans do not really help to equalize costs for any student.

Maximum stipends. When the pattern of maximum stipends for grants and scholarships is considered, the evidence of legislative intent in favor of the private sector is even more compelling. In particular, maximum stipends for these program options among the various states tend to favor students who choose to attend high-cost (typically private) institutions, as Table VI reveals:

Table VI

Maximum Stipends Among Program Options

Range of Maximum	No. of Options in This Range
$1200 – 2500	19
$ 600 – 1000	10
$ 100 – 500	9

Among all states (both single-option and multiple-option), there are as many program options with maximum limits *in excess of $1000*, as there are at or below $1000. In this respect, it is useful to recall that high maximums promote "freedom of choice" between public and private institutions, as noted in the Kentucky report on model legislation:

> *A . . . model of this nature (limits) the amount of award to a sum not exceeding a fixed limit,* **usually $1000 or more**[10]*, or tuition (whichever is lesser), or the amount of remaining need . . .*[11]

In short, on the basis of the Kentucky thesis, plus the evidence of Table VI, it may be concluded with some confidence that legislative intent is solidly behind "freedom of choice" with its somewhat preferential treatment of private sector institutions.

[10]Emphasis supplied.

[11]See Chapter III, p. 29

Summary comments. In terms of basic policy objectives, student support legislation focuses primarily on student needs concerning equality of access and freedom of choice. From this basic perspective, one must conclude that legislative intent is necessarily impartial with respect to the interests of either public or private institutions. But when specific programmatic features are examined, the cumulative impact of the evidence is that existing legislation is everywhere concerned to restore some competitive balance to private institutions in enrolling students. The most important evidentiary patterns are these:

1. Program options involving grants and scholarships, though presumably concerned with equality of access to higher education *per se*, frequently encourage attendance at private institutions. Fourteen out of 33 states provide such an option, and in five states it is the only option available.
2. Loan program options, which are an access barrier for low-income students and do not equalize costs for private college students, are the most infrequent option among all states, and do not exist at all in sixteen single-option states.
3. Program options with high maximum limits for individual awards tend to promote "freedom of choice" or, what amounts to the same thing, to provide real, rather than apparent, alternatives for students inclined toward attending private colleges. Among all program options available in 33 current state programs, there are as many maximum stipends ranging from $1200 to $2500 as from $100 to $1000.

This evidence suggests, in turn, that the future potential of student support programs in strengthening the state aid movement involves an emphasis on multiple program options featuring grants and scholarships, with some options reserved for private institutions only. Similarly, these options should set maximum stipends to ensure adequate support for "freedom of choice" and not simply for "equality of access." For those interested in the more descriptive details of grant and scholarhsip options at present available, both Table VII on the following pages, and Appendix B at the end of the report provide additional information.

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Table VII

Student Financial Assistance Programs

State	Type of Program	Public/ Private	Need Factor	Competitive	Avail. Per Student/Yr.	Term of Eligibility	Average Grant, Award or Loan**	Restrictions
Alaska	Loan Program	Both	Yes	No	$2,500	6 years	$1,789	None
	Tuition Grant	Private	No	No	1,400	Not stated	1,017	None
California	College Opportunity Grant Program	Both	Yes	No	$2,200	4 years	$1,240	None
	Competitive Scholarship Program	Both	Yes	Yes	2,200	4 years	1,044	Tuition and fees only
Connecticut	Competitive Scholarship Program	Both	Yes	Yes	$1,000	4 years	Not avail.	None
Florida	Florida Student Assistance Grants	Both	Yes	No	$1,200	4 years	$1,160	None
	Florida Student Assistance Loan Program	Both	Yes	No	Not avail.	Not stated	Not avail.	Florida resident only
Georgia	Grants and Scholarships to College Students Attending Private Colleges	Private	No	No	$ 400*	4 years	$ 400	Tuition only
Illinois	Higher Education Student Assistance Law	Both	Yes	Yes	$1,300	4 years	Not avail.	Tuition & fees only
Indiana	Scholarships	Both	Yes	Yes	$1,400	4 years	Not avail.	Tuition & fees only
	Educational Grant Program	Both	Yes	No	1,400	4 years	Not avail.	Tuition & fees only

*Will be increased to $600 during fiscal year 1974-75.

**All figures refer to latest available data as supplied by the respective states.

Table VII (Continued)

Student Financial Assistance Programs

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State	Type of Program	Public/ Private	Need Factor	Competitive	Avail. Per Student/Yr.	Term of Eligibility	Average Grant, Award or Loan	Restrictions
Indiana (Cont'd.)	Freedom of Choice Grant Program	Private	Yes	No	*	4 years	Not avail.	Tuition & fees only
Iowa	Iowa Scholarship Program	Both	Yes	Yes	$ 610	4 years	$500-$600	Tuition & fees only
	Iowa Tuition Grant Program	Private	Yes	No	$1,000	4 years	$960	Tuition & fees only
Kansas	State Scholarship Program	Both	Yes	Yes	$ 500	Renewable once	Not avail.	Tuition & fees only
	Tuition Grant Program	Private	Yes	No	$1,000	4 years	Not avail.	Tuition & fees only
Kentucky	Loan Program	Both	Yes	No	$1,500**	5 years	Not avail.	None
	Scholarship	Both	Yes	Yes	$1,500	4 years	Not avail.	None
	Tuition Grants	Private	Yes	No	***	4 years	Not avail.	Tuition only
Maine	State Tuition Equalization Program	Private	Yes	No	$ 750	4 years	Not avail.	Tuition only
Maryland	State Scholarship Program	Both	Yes	Yes	$1,500	4 years	Not avail.	None
Massachusetts	General State Scholarships	Both	Yes	No	$ 900	4 years	Not avail.	None

*The difference between the amount of the scholarship award or educational grant not to exceed the sum necessary to pay tuition and fees at the institution.

**Loans made only to students who are unable to secure loans from private lenders.

***The maximum amount shall not exceed 50% of the average state appropriation per full-time equivalent (FTE) enrolled in all public institutions of higher education.

Table VII (Continued)

Student Financial Assistance Programs

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State	Type of Program	Public/ Private	Need Factor	Competitive	Avail. Per Student/Yr.	Term of Eligibility	Average Grant, Award or Loan	Restrictions
Michigan	Competitive Scholarship Program	Both	Yes	Yes	$1,200	4 years	Not avail.	Tuition & fees only
	Tuition Grant Program	Private	Yes	No	$1,200	4 years	Not avail.	Tuition & fees only
Minnesota	Student Loan Program	Both	Yes	No	$1,500	4 years	Not avail.	Tuition, fees, books, supplies, & other expenses in that order only
	State Scholarship Program	Both	Yes	Yes	$1,000	4 years	Not avail.	Tuition, fees, books, supplies, & other expenses in that order only
	Grant-In-Aid Program	Both	Yes	No	$1,000	4 years	Not avail.	Tuition, fees, books, supplies, & other expenses in that order only
Missouri	Student Grant Program	Both	Yes	No	$ 900	5 years	$595	Tuition & fees only
New Jersey	State Scholarship Program	Both	Yes	Yes	$ 500	4 years	Not avail.	Tuition & fees only
	Incentive Grants	Private	Yes	No	$ 500	4 years	Not avail.	Tuition & fees only
	Tuition Aid Grants	Private	Yes	No	$1,000	4 years	Not avail.	Tuition & fees only
	Educational Opportunity Fund Program	Both	Yes	No	*	6 years	Not avail.	None
New York	Regents College Scholarships	Both	Yes	Yes	$1,000	4 years	$576	Tuition & fees only
	Scholar Incentive Awards	Both	Yes	No	$ 600	4 years	$276	Tuition & fees only

*Covers need up to 100% in conjunction with the financial resources of the applicant.

Table VII (Continued)

Student Financial Assistance Programs

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State	Type of Program	Public/ Private	Need Factor	Competitive	Avail. Per Student/Yr.	Term of Eligibility	Average Grant, Award or Loan	Restrictions
New York (Cont'd.)	Higher Education Opportunity Program	Both	Yes	No	$1,500	5 years	$1,300	None
North Carolina	Contracts to Allow Private Institutions to Administer State Appropriated Scholarships to Needy North Carolina Students	Private	Yes	No	*	N/A	N/A	N/A
North Dakota	State Student Financial Aid Program	Both	Yes	No	$ 500	Not stated	Not avail.	None
Ohio	Instructional Grant Program	Both	Yes	No	$1,320	5 years	$ 765	Tuition & fees only
Oregon	Four-Year Cash Award	Both	Yes	Yes	$ 500	4 years	Not avail.	Tuition & fees only
	Need Grant Awards	Both	Yes	No	$1,500	4 years	Not avail.	None**
	Higher Education Student Loans	Both	Yes	No	$1,000	4 years	Not avail.	None
	Scholarship Program	Both	Yes	Yes	$ 500	4 years	Not avail.	Tuition & fees only
Pennsylvania	State Scholarship Program	Both	Yes	Yes	$1,200	4 years	Not avail.	None
	Higher Education Equal Opportunity Act	Both	Yes	No	Not avail.	Not stated	Not avail.	***

*The private institutions are paid a fixed sum of money for each N.C. student enrolled during the previous year.
**No grant shall exceed 50% of the student's financial need.
***Limited to remedial, counseling, and tutorial services.

Table VII (Continued)

Student Financial Assistance Programs

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State	Type of Program	Public/ Private	Need Factor	Competitive	Avail. Per Student/Yr.	Term of Eligibility	Average Grant, Award or Loan	Restrictions
Rhode Island	State Scholarships	Both	Yes	Yes	$1,000	Not avail.	$ 750	Tuition & fees only
South Carolina	Tuition Grant Program	Private	Yes	No	$1,500	4 years	$1,235	Tuition & fees only
South Dakota	State Student Incentive Grant	Both	Yes	No	$1,000	4 years	Not avail.	Tuition & fees only
Tennessee	Tuition Grant Program	Both	Yes	No	$1,000	4 years	Not avail.	Tuition & fees only
Texas	Tuition Equalization Grants	Private	Yes	No	$ 600	4 years	Not avail.	Tuition only
Vermont	Student Loan Program	Both	Yes	No	$1,000	Freshman yr.	Not avail.	Not specified
	Honor Scholarship Grants	Both	No	Yes	$ 100	4 years	$ 100	Not specified
	Incentive Grants	Both	Yes	No	$ 800	4 years	Not avail.	Not specified
Virginia	Tuition Assistance Loan Program	Private	Yes	No	$ 400	4 years	Not avail.	Tuition only
	Scholarship Assistance Program	Private	Yes	No	$ 400	4 years	Not avail.	None
Washington	State Need Grant Program	Both	Yes	No	$ 650*	4 years	Not avail.	None
West Virginia	State Scholarship Program	Both	Yes	Yes	$ 900	4 years	Not avail.	Tuition & fees only
Wisconsin	Honor Scholarship Program	Both	No	Yes	$ 800	Not avail.	Not avail.	None
	Talent Incentive Grants for the Disadvantaged	Both	Yes	No	$1,000	Not avail.	Not avail.	None
	Tuition Grant Program	Private	Yes	No	$1,000	Not avail.	Not avail.	Tuition only

*The sum necessary to close the financial gap between the budgetary cost of attending an institution of higher education and the family's and student's contributions.

CHAPTER VI

Impact of Student Support on Private Colleges and Universities

In attempting to assess the impact of student support upon private colleges and universities and upon student decisions to attend private institutions, two strategies were planned initially. First, a survey of individual state studies concerning the impact of their own state programs was initiated. This survey was expected to provide invaluable insights into the degree of efficiency with which current programs were accomplishing the intent of state legislation. Second, a plan was designed to survey a representative number of states with operative student support programs involving private institutions. Its aim was to determine whether there was any relationship between the implementation of the state aid program and student enrollment patterns in the private institutions in the selected states. After several attempts to develop a model for this second study, it became evident that, within the time and budgetary constrainst of the over-all study, a definitive survey of impact could not be undertaken. However, such a study should have priority in the years ahead.

The remainder of this chapter sets forth a review of selected recent state and association studies of student support programs for private higher education.

Alaska. The state of Alaska provides a Student Loan Program available to students attending both public and private institutions and a Tuition Grant Program for students attending private institutions. The loan program may be used at both in-state and out-of-state institutions, but the Tuition Grant Program can be used only at in-state private institutions. For purposes of this study, we will review the Tuition Grant Program only.

The tuition grant award is made to a student enrolled at a private institution in an amount up to the difference between (1) the cost of operation per full-time student per academic year at a public institution, and (2) the tuition paid by the student attending the public institution. The computation of cost per institution is done on a location-by-location basis in order to achieve parity between the public institution and the private institution in the same community or city. In no case may the award exceed $1,400.

In August 1973, an *Annual Report for 1972-73* prepared for the Student Loan and Tuition Grant Selection Committee provided the following information on the Tuition Grant Program:

1. A total of 738 full-time and part-time students received a total of $754,353 in grants in 1972-73. Of these totals, 603 of the students

were full-time enrollees receiving $703,625 for an average award of $1,167.

2. The relationship of the amount of the award to the difference between the cost of operation per student at public institutions and tuition charges at those institutions has a negative impact upon the feasibility of this program for part-time students.
3. Approximately 54 per cent of the tuition grant recipients indicated that the grant covered 40 per cent or less of their actual total educational costs for the year.
4. As an index of the influence the tuition grant had upon choice of a college, 59 per cent of the award recipients indicated that the grant had a significant influence on their choice.

Kansas. In the spring of 1972, the State of Kansas enacted and funded a program of tuition grants for eligible full-time in-state students attending an accredited independent institution of higher education in Kansas. The amount of the tuition grant is based on need and may not exceed the lesser of $1,000 or the total tuition and required fees of the student for two semesters.

The legislature funded the initial year of the program in the amount of $1,000,000.

On December 1, 1972, a report of the first-year experience with the implementation of the program was presented to the governor and members of the Kansas legislature. The report aimed at: "(1) explaining national developments in state financial assistance programs; (2) providing insights into program implementation; (3) evaluating several effects of the program including the effect on independent college enrollment and statewide college enrollment; (4) placing the program in the context of new federal directives; and (5) answering questions which relate to policy on state organization and program funding."

For purposes of evaluation of the program's impact, only selected aspects of the study are presented below.

1. A total of 3,163 students applied for grants; 2,670 of them were judged to meet need criteria. The total amount of tuition grant funds needed was $2,477,951. Since only $1,000,000 was allocated for the year, only 1,008 students received first-term grants and 36 more students reserved grants for later terms.
2. The impact of this funding and the over-all program availability is described by students as follows:
   a. Approximately 250 non-recipient students attended a private college because of the existence of the program.
   b. Approximately 275 of the students attending a private college because of the tuition grant program would have attended a Kansas public college.
   c. Approximately 275 of the students attending a private college because of the tuition grant program would not have gone to college in Kansas.

The experience of one year is evidently too limited to support a major assessment of the impact of the program on enrollment and institutional

finance. The limited funding also hindered an adequate assessment of impact, since 2,670 students were judged to meet need criteria and only slightly over 1000 received aid. Based upon the one year of experience, and even with the limited funding, several observations were made in the report: (1) The availability of the tuition grant program did affect the decisions of individuals in terms of college choice; (2) The impact of the program on student choice did slow the relative decline in private college enrollment; (3) The grant program explained some of the 1972 enrollment differences among colleges; (4) The program established a potential for private college enrollment growth through the attraction of freshmen.

Several other conclusions drawn as a result of the study were: (1) The majority of applicants for tuition grant aid had defined need; (2) The principal factor contributing to the success of the program during the first year was the effort provided by the independent colleges; (3) The tuition grant program was highly local and regional in its effect on the individual colleges and on the state as a whole; and (4) The program has increased the freedom of choice in terms of college attendance for needy Kansas students.

Oregon. In 1971 the Oregon legislature appropriated funds to be granted to Oregon's private colleges and universities for the purpose of reimbursing the institutions for educational services provided to Oregon residents. The legislation authorizing this funding (*Chapter 693, Oregon Laws of 1971*) is known as the *Purchase of Educational Services from Independent Colleges 1971-73* and is primarily a contract program. The State Scholarship Commission may enter into contracts with private and independent institutions of higher education in Oregon for the purpose of providing nonsectarian educational services for resident Oregon students.

Payments to the private and independent institutions of higher education under the contracts must be determined by the Commission and must not exceed $250 for every 45 quarter hours or the equivalent of approved or registered course work completed by undergraduate students. The funding amount cannot exceed the actual institutional cost of providing the service. If adequate funds are not provided to meet $250 per 45 quarter hour units, the amount per 45 quarter hour units may be reduced to meet contract requirements.

In June 1973, a report was issued which attempted to set forth the impact of the state assistance program on the private and independent institutions.[1] The primary objectives of the investigation were: (1) To develop a research model for determining the impact of governmental aid on the "financial health" of private institutions of higher education, and (2) to assess the actual impact of the Oregon Purchase of Educational Services program on the "financial health" of the participating institutions.

The impact of the state aid program was assessed through use of an "index of institutional financial health." This index was developed from a series of computations of data from institutional *HEGIS* Reports (Form No. 2300-4). The *HEGIS* variables were weighted by use of constant values in recognition

[1]Larry Large, *Impact of State Assistance on Oregon's Private and Independent Institutions of Higher Education*, Salem, Oregon, Educational Coordinating Council, June 1973

of the relative importance of each variable to the fiscal health of the institution.

In order to measure the impact of the Purchase of Educational Services program, an index of the over-all financial health of the aggregate fourteen private institutions was computed for the three years preceding the funding of the purchase program. The mean index for each of the three years (1968-69 to 1970-71) showed a progressive decline in financial health. In 1971-72, the first year of the purchase program, the index reflected a slight reversal in this trend. It is significant that this reversal took place even though the state assistance amounted to less than 5 per cent of the revenue at all institutions and, in fact, was less than 3 per cent at the majority of institutions. Therefore, with an investment of only $1,000,000 of state assistance in 1971-72, the reversal in trend reflects an impact on private colleges' financial health consistent with the objectives of the legislation creating the Purchase of Educational Services from Independent Colleges program.

In addition to the quantifiable impact measure provided by the index, a subjective assessment was made through interviews with the independent college presidents. The majority of the presidents were highly supportive of the program and its intent and saw the funding derived from the program was important to the fiscal viability of their institutions. Eight of the fourteen presidents felt that there was a critical percentage range above which the state assistance as a percentage of total educational and general revenues would have a significant influence. Although that percentage range was not specified, the study did show that the state contract payment made the difference between an operating deficit and an operating balance for a number of the institutions for the year under study. Ten of the fourteen institutions had anticipated how much funding they would probably receive during the first year of the program and had developed plans accordingly.

National Association of State Scholarship Programs: Fifth Annual Survey

In October 1973, the fifth annual report on comprehensive state scholarship and grant programs was published by the National Association of State Scholarship Programs. This Report covered the 1973-74 academic year and included 28 states; it reportee on 49 programs in existence in the surveyed states.

Of the 49 programs identified in the NASSP report, 45 or 92 per cent were limited to undergraduate students. Table VIII[2] sets forth relevant data on the type of institution at which funds from these state programs may be used. It is evident that the majority of the 49 programs are available at both public and private institutions of higher education. These data would tend to support the current state emphasis on increasing student access to post-secondary education. Since eleven of the programs were designated for

[2] Joseph D. Boyd, *National Association of State Scholarship Programs: Fifth Annual Survey*, Deerfield, Ill., Illinois State Scholarship Commission, October 1973

students attending private institutions only, it is important to know how much of the funding in programs identified as available for use at both public and private institutions was awarded to students attending private institutions.

In this analysis, data for 1972-73 were used to determine computations in Table IX. The figures in this table do not include programs for private college students only, nor several state programs in which data were not available to

Table VIII

Awards Usable at Public/Private Institutions or Both, 1973-74

	N	Per cent
Public only	1	2.0
Private only	11	32.4
Both	37	75.5
Total	49	99.9

the NASSP study team. The data given for students attending private institutions have been computed from percentages provided in the NASSP report and should be viewed as estimates.

Table X sets forth data from the NASSP report on the magnitude of state programs established for private college students only.

Table IX

Number and Dollar Amount of Awards to Private College Students from Comprehensive Need-Based State Financial Aid Programs For Twenty-One States with Programs for State Residents to Attend Either Public or Non-Public Colleges and Universities - 1972-73

	Total Program	Awards to Students Attending Private Institutions	Private College Students as Per cent Total
Number of Awards	616,970	226,456	37.5
Amount of Awards	287,022,933	141,819,720	49.4
Average Award	$467.00	$626.00	

Source: Derived from Fifth Annual NASSP Report.

BEST COPY AVAILABLE Table X

Data Regarding State Aid Programs Specifically
For Students Attending Private Institutions of Higher Education
For Years 1971-72, 1972-73, and 1973-74

	1971-72	1972-73	1973-74*
Number of Programs	7	10	11
Total Dollars	$17,699,869	$23,423,107	$37,333,000
Number of Awards	29,273	36,502	52,925
Average Award**	$ 603	$ 642	$ 705
Highest Program Average	$ 1,020	$ 1,163	$ 1,250
Lowest Program Average	$ 398	$ 446	$ 211
Mean of Program Averages***	$ 644	$ 746	$ 816

*Estimated
**Average of Total Dollars Divided by Number of Awards
***Mean of Program Average Awards

This table shows a steady growth in the number of programs, dollars paid out to students, and number of awards made. Of particular interest in these programs, which by and large are aimed at tuition equalization, has been the growth in the mean of program average awards. With the exception of one program (the $211 low average), funds from which can be used together with those from a companion comprehensive state scholarship program, the 1973-74 mean program average shows a growth of nearly $100 over the 1972-73 figure.

Another significant finding of the NASSP study is that, of the 49 programs identified in the 28 states, only 9 contain provisions for the student recipient to enroll at an out-of-state institution. This finding bears upon student freedom of choice (discussed elsewhere in this report), a consideration important to both the student and the state.

The NASSP study also highlights another critical factor which must be addressed in the years ahead. As increased numbers of students embark upon college study on a part-time basis, most current state aid programs will not meet their financial need since only 8 of the 49 programs consider part-time student will be necessary. One of the problems which has not been dealt with adequately in developing aid for part-time students is a strategy for defining their financial need.

In attempting to determine the educational costs which the 49 programs used to establish need, the NASSP study asked the following question: Are awards in this program limited to tuition and fees? The responses were: yes, for 24 programs; no, for 22 programs; and tuition only, for 3 programs. The

22 programs which were not limited to tuition and fees provided for the following costs in their coverage:

Costs Covered	Number of Programs
Room and Board	16
Books	13
Supplies	7
Personal Expenses	6
Transportation	5
Other Miscellaneous Costs	4
Any Educational Expense	2
All Costs	2
Supportive Services	1

Since the costs of a college education far exceed basic tuition and fees, the inclusion of such items as room and board, books, supplies, transportation and personal expenses in determining need provides a more comprehensive and valid measure of student expenses.

APPENDIX A

Summary Reports on Constitutional Law

The following state reports supplement the general commentary on constitutional aspects contained in Chapter II. We repeat, however, a previous *caveat* concerning these reports, i.e., that they are ". . . quite summary in nature and, without additional background, are too brief to provide technical assistance for legal experts who may be called upon to prepare new forms of state aid legislation, to improve upon existing forms, or to defend either of these before legislative bodies or the courts."

ALABAMA

Although Alabama has numerous constitutional provisions placing restrictions of some variety on aid to private colleges and universities, their effect is very uncertain because of the almost nonexistent litigation in this field. Actual aid to such private institutions has been extremely limited. Article 14, section 263 forbids the use of public school money for support of sectarian schools, and Article 4, section 73 requires a two-thirds vote by the legislature before appropriating funds to any educational institution not under the absolute control of the State.

A proposed tuition grant plan is the only form of aid that has been tested, and the Alabama Supreme Court in a 1973 advisory opinion held it unconstitutional under Article 14, section 263, as to students attending sectarian colleges and universities. The Court did not discuss the source of the money for the program and thus ignored any significance attached to the fact that section 263 relates only to "money raised for the support of the public schools." Based on the reasoning in this advisory opinion, it appears likely that the Alabama provisions will be interpreted with standards similar to the First Amendment.

ALASKA

The Constitution of Alaska contains, in addition to its establishment and free exercise provisions, a provision prohibiting the payment of public funds "for the direct benefit of any religious or other private educational institution" (Art. VII, § 1) and a provision requiring a public purpose for any taxation, appropriation, or use of public property or credit (Art. IX, § 6). However, the Constitution seems to present two avenues for aid to private education in the State. First, there is the distinction drawn in Article VII, Section 1 between "direct" and "indirect" benefits to religious and private educational institutions. Only direct benefits are forbidden. While the State

Supreme Court in *Matthews v. Quinton* overturned a school bus transportation program, it did so because the program represented a "direct" benefit. The "child benefit" theory was not altogether rejected; it was merely found not applicable to that case. So there seems to be room for programs of aid to *students* rather than to schools, if these programs can be structured so as not to appear to provide direct aid to private or religious schools. Under this approach, the scholarship loan and tuition grant programs stand a good chance of being upheld. The 1972 bus transportation program, however, would seem to be valid only if the *Matthews* decision is rethought.

The second avenue to aiding private schools is that of "public purpose" under Article IX, Section 6. The courts have shown considerable deference to legislative findings of public purpose for their expenditures. When a public purpose is served by a program which avoids the appearance of direct aid, the program would seem well on its way to judicial validation. The legislature should be aware, however, of the pitfalls of excessive public involvement in sectarian education under the First Amendment to the United States Constitution, or its Alaska equivalent (Art. I, § 4).

ARIZONA

There are no reported Arizona cases ruling on the constitutionality of programs of public or state aid to nonpublic or sectarian educational institutions. Arizona currently has no program of aid to private education. The Arizona Constitution lays down seemingly strict prohibitions on state aid to religious and educational institutions. Article 2, section 12 prohibits appropriations for the support of any religious establishment. Article 9, section 10 provides that "[n]o tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation." The leading Arizona Supreme Court case applying these sections is *Community Council v. Jordan* (1967), which upheld the constitutionality of a contractual arrangement whereby the state agreed to put up 40% of the money spent by the nonprofit Community Council for relief expenditures made by a religious organization (the Salvation Army) during emergency situations. The court accepted the "child benefit theory" and refused to adopt the strict view that no public funds may be channeled to religious organizations for any purpose whatsoeve without contravening the constitutional prohibitions. The Arizona Attorney General has relied on *Community Council* in ruling that proposed legislation providing for educational grants to the parents of children enrolled in nonpublic schools, including parochial schools, was constitutionally permissible. Any program of aid must also avoid the prohibition of donations, grants, and lending of credit contained in Article 9, section 7, but Arizona courts have recognized a "public purpose" exception to this section.

ARKANSAS

There has been no litigation in Arkansas relating to state aid to private colleges, other than interpretations of the provision granting tax exemptions,

and the Attorney General has not recently issued any opinions on this subject. The Constitution does not have a provision expressly forbidding appropriations for religious or sectarian purposes. The basic freedom of religion guarantee in Article 2, section 24 forbids only the giving of preference to any religious denomination and should be as flexible, or more so, than the First Amendment. There are restrictions on the use of the public school fund, but these should be inapplicable to appropriations from the State's general funds. Finally, the prohibition in Article 16, section 1 against the lending of State credit should be only a minor obstacle, since it has been interpreted not to apply to the incurring of indebtedness, which is payable entirely out of income from the activity for which the money was borrowed.

CALIFORNIA

The Constitution of California contains several specific provisions which pose difficulties for programs of state aid to private higher education. Article IX, section 8 provides that no public money shall be appropriated for the support of any sectarian or denominational school or any school not under the exclusive control of the officers of the public schools. Article XIII, section 21 provides that no money shall be appropriated for the purpose or benefit of any institution not under the exclusive management and control of the state as a state institution. Section 24 of Article XIII prohibits appropriations to or in aid of any religious sect or sectarian purpose or to help support any college or university controlled by a religious denomination. Section 25 of Article XIII prohibits the gift of public funds to private institutions, but the California Attorney General has concluded that the California courts would find an exception to this prohibition because of the "public purpose" of expenditures for education. California courts have accepted the "child benefit theory" and held school busing of parochial school children and a released time program to be constitutional. The constitutional prohibitions pose substantial barriers to programs of direct aid to both sectarian and nonsectarian institutions although their precise limits in the field of education have not been established in judicial opinions. The issuance of tax-exempt bonds for construction of facilities by the Educational Facilities Authority appears to be constitutional.

The constitutional prohibitions do not by their terms extend to individuals. California's programs for loans, scholarships, fellowships, and opportunity grants appear permissible although there are no reported cases considering the constitutionality of these programs.

COLORADO

Colorado provides neither direct state aid to private higher education institutions nor direct state financial assistance to students attending such private institutions. The lack of case law and aid programs can be explained in large part by the very strict prohibitions in the Colorado Constitution. Section 34 of Article V prohibits appropriations for educational and other purposes "to any person, corporation or community not under the absolute

control of the state, nor to any denominational or sectarian institution or association." Article IX, section 7 prohibits payment from public funds "in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination . . ." Article V, section 34 has been used to strike down programs of public assistance to the private sector, but the Colorado Legislative Council has taken the position that there appears to be no prohibition against contracting for services with private colleges. There have been no aid programs challenged under Article IX, section 7. Section 2a of Article XI specifically permits a student loan program, but it is an open question whether repayment in forms other than money would be permissible.

Although the precise scope of the Colorado prohibitions has not been established in judicial opinions, it appears that virtually any aid program could be subject to constitutional attack.

CONNECTICUT

Connecticut's Constitution offers considerable room for state aid to private and sectarian education, particularly at the college level. The principal restriction in the State Constitution is on the use of the school fund. If separate appropriations are made for programs of state aid, the programs will have to meet primarily the tests of the First Amendment. The courts have generally accepted the public purpose findings of the legislature, and the child benefit theory. The only objection to a program of schoolbus transportation for nonpublic school students was its illegal use of the public school fund.

Although the purchase of "secular educational services" by the state from parochial schools was rejected by a Federal District Court in *Johnson v. Sanders* (1970), those parochial schools have been held to have different mission than most church-related colleges. The secular educational mission of such colleges makes them a more acceptable object for the State's assistance. Because of this distinction, facilities assistance was upheld in *Tilton v. Richardson* by the United States Supreme Court in 1971.

If programs of state aid to private institutions of higher education avoid excessive state entanglement with the religious aspects of the institutions and make provision to avoid funding of sectarian activities, they should stand a good chance of being held constitutionally valid.

DELAWARE

Delaware adopted a policy of religious freedom early in the colonial period, and has developed a strict separation of church and state. The Constitution in Article X, section 3 prohibits any fund appropriated or raised for educational purposes from being appropriated to, or used by, or in aid of any sectarian school. As it has been interpreted by the Delaware Supreme Court, the section will probably present an insurmountable obstacle to most forms of state aid to sectarian, private colleges and universities. By case law or

opinions of the Attorney General, schoolbus transportation, dual enrollment programs, and certain auxiliary services have been declared unconstitutional, where church-related lower educational institutions were involved. While there have been no cases of Attorney General opinions relating to college level programs, there is no indication that any distinction will be made between these two levels of education. The Delaware Court in the 1934 case of *State ex rel. Traub v. Brown* and in a 1966 advisory opinion rejected the "child-benefit" theory and concluded that section 3 proscribed any and all aid to sectarian schools, including secondary or incidental aid. However, Article X, section 3 does specifically authorize tax exemptions for all real and personal property used for school purposes, and Article X, section 5 now allows the free transportation of private elementary and high school students.

There are also some restrictions on aid to nonsectarian, private colleges and universities. The public school fund can be used only to support the public schools, thus the source of money for private college programs is limited. Also Article VIII, section 4, the lending of credit provision, probably blocks any appropriations, loans, or pledges of credit directly to nonsectarian colleges, unless the required three-fourths vote is attained.

If the revised Delaware Constitution, proposed by the General Assembly in 1972, is indicative of future trends, then the separation of church and state will be maintained even more strictly. Nonsectarian, private schools would be added to the list of prohibited recipients of any aid in Article X, section 3, and the authority for bus transportation would be eliminated, as well as the mandatory tax exemption for school property.

FLORIDA

The Florida Constitution should present no major barriers for state aid to nonsectarian private colleges, but Article 1, section 3 could present formidable obstacles for aid to sectarian institutions. This provision prohibits any law respecting the establishment of religion and forbids the use of public revenues directly or indirectly in aid of any sectarian institution. The cases have stressed that incidental benefit to religious institutions was permissible where a program promoted the general welfare of Florida citizens. Apparently the Florida Court will not find direct or indirect aid unless it can point to an actual expenditure of public revenue that aids sectarian institutions. The 1971 state case of *Nohrr v. Educational Fac. Auth.* indicated that the State can lend money to sectarian colleges for building construction as long as the source of the money is not the taxing power of the State and does not impose a new financial liability on the State. Temporary leasing of public buildings and tax exemptions for sectarian institutions have also been approved by case law.

The Attorney General has been even less strict in applying Article I, section 3 by approving the gratis use of public audiovisual materials by church-related schools, even though such a program necessarily involved an actual expenditure of public funds.

The future trend of decisions in Florida appears to be interpretations of Article 1, section 3 that are very similar to the federal establishment clause,

but the Florida Court might draw the line at programs such as free transportation of parochial school children, where a visible expenditure of public money is involved.

GEORGIA

Georgia has taken a liberal stand in regulating church and state relations. There have been no cases specifically involving educational institutions which interpreted Article I, section 1, paragraph 14, which forbids using public money directly or indirectly in aid of any sectarian institution. However, the 1921 state case of *Wilkerson v. City of Rome* indicated that the object of this provision was generally to prevent any appropriation or subsidy that would even remotely tend to establish a state religion. The theory that the State could contract for services with sectarian institutions was rejected in 1922 by the Georgia Court in *Bennett v. City of LaGrange*. To fall within the prohibition of the section, the 1970 *Bradfield v. Hospital Authority* case decided that the source of funds must actually be the public treasury, not the revenue from the sale of any revenue anticipation certificates.

The Attorney General has issued a number of relevant opinions in the last fifteen years. He has specifically approved the enrollment of pupils from parochial schools in a summer, public school program, tuition grants to students in colleges not principally concerned with sectarian instruction, and the leasing of public school facilities to religious organizations. Contracting with sectarian school agencies for goods and services has been disapproved, while school bus transportation for parochial pupils has been called possibly unconstitutional.

The prohibition in paragraph 14 appears absolute but it has been restricted by other amendments. Certainly direct support of sectarian schools would violate the Georgia Constitutions, but it is likely that there will be much flexibility as to what exactly constitutes "indirect" aid. Various types of loans, scholarships and grants to citizens for educational purposes are authorized explicitly by the provisions of Article VII, section 1, paragraph 2 as well as Article VIII, section 13, paragraph 1.

Nor do the restrictions on lending credit or incurring public debt apply to most forms of state aid. Article VII, section 5, paragraph 1, relating to the credit of political subdivisions of the State, makes an exception for the support of schools within the respective limits of municipal corporations. Also Article VII, section 3, paragraph 1 allows the incurring of debt to make educational loans to Georgia citizens.

As to private, nonsectarian colleges, the primary obstacle is the ban on donations or gratuities in Article VII, section 1, paragraph 2. While aid directly to students at such schools would not be affected, direct subsidies of the colleges would arguably be unconstitutional. However, a contract for services should avoid the prohibition in the paragraph, but it is not clear if merely educating citizens would be sufficient consideration. The Attorney General has advised that activities merely beneficial to the public would not constitute services actually rendered for the purposes of this constitutional provision.

It seems likely that Georgia will continue to focus on the identify of the aid recipient and the source of the funds to make the distinction between permissible and impermissible aid to sectarian educational institutions.

HAWAII

Hawaii's Constitution demonstrates a strong concern for public, nonsectarian education. Article IX, Section 1, which provides for the establishment and maintenance of a statewide system of public schools and of a state university, also quite specifically bans the use of state funds for private or sectarian educational institutions. This prohibition has been taken at face value by the courts, and the "child benefit" theory has been specifically rejected. The decision of the Supreme Court of Hawaii in *Spears v. Honda* (1968), in which the provision of schoolbus transportation to nonpublic school students was held to be unconstitutional, indicates that the courts would hold a firm line against public funding of private education, whether direct or indirect. However, no other programs involving public funds have ever been implemented.

A released time program has remained effective apparently because it does not involve the use of public funds or personnel. Programs involving such state funds would present a greater problem. A constitutional amendment would offer the best hope for state aid to private colleges or other private institutions. Meanwhile, public legislative concern in Hawaii seems to be more directed to improving public schools than to aiding private institutions.

IDAHO

Article IX, Section 5 of Idaho's Constitution forbids the State and all public corporations to "make any appropriation, or pay from any public fund whatever, anything in aid of" a religious society or an educational institution controlled by a religious denomination. In 1971, the Supreme Court of Idaho held in *Epeldi v. Engelking* that this Section prohibited the use of public funds to transport pupils to parochial schools, expressly rejecting the "child benefit theory" employed by the United States Supreme Court in *Everson v. Board of Education* in 1947. In 1972, Idaho's voters rejected a proposed amendment to Article IX, Section 5 to permit transportation of parochial school pupils.

Thus, Idaho must be considered one of the states in which programs aiding church-related colleges and universities and their students the stiffest constitutional obstacles. Aside from the hurdles facing aid to church-related colleges, however, there would appear to be little question as the constitutionality of well drafted programs aiding private colleges and universities.

ILLINOIS

The Illinois Constitution does not appear to be a serious obstacle to programs aiding private colleges and universities. Article VII, Section 1 of the

Illinois Constitution limits the use of public funds, property and credit to public purposes, but in 1972 the Supreme Court of Illinois in *City of Salem v. McMackin* took a permissive view of what could constitute a public purpose, holding that a city would issue bonds to finance construction of an industrial facility for lease to a private firm, where the purpose was to stimulate economic development and increase employment. The education of students in private educational institutions would seem to be a public purpose under the broad standards set down by the Court.

Although Article X, Section 3 of the Illinois Constitution forbids any payment of public funds in aid of a sectarian purpose or to help support or sustain any educational institution controlled by a religious denomination, the Supreme Court of Illinois has adopted a consistantly lenient construction of the Section since *Dunn v. Chicago Industrial School for Girls* in 1917. The Committee on Education of the 1970 Illinois Constitutional Convention adopted the language of Article X, Section 3 without change from the State's 1870 Constitution, noting that it understood the Section to be no more restrictive than the federal establishment clause. The Supreme Court of Illinois approved the use of public funds to transport parochial school pupils in 1973 in *Board of Education v. Bakalis*, citing the Committee's report for the proposition that the Illinois Constitution permits programs approved under the federal establishment clause. While the long history of public transportation of parochial school pupils in Illinois was an important factor in this decision, it does not appear that the Illinois courts would strike down programs under Article X, Section 3 of the State Constitution which would pass muster under the First Amendment.

INDIANA

The Indiana Constitution has not been construed by the State's courts with respect to programs aiding private colleges and universities but it does not appear to create serious barriers to the implementation of programs which comply with the First Amendment to the United States Constitution. Article 1, section 4 of Indiana's Constitution forbids the State to give preference to any religious denomination or to compel its citizens to "attend, erect, or support any place of worship, or to maintain any ministry." Article 1, Section 6 forbids the drawing of money from the treasury "for the benefit of" any religious institution. There has been little litigation construing these provisions, but the authority which exists suggests that Indiana's courts might take a permissive view with regard to aid to private education. In 1940, in *State ex rel. Johnson v. Boyd*, the Supreme Court of Indiana approved an arrangement incorporating parochial schools into a public school system which arguably would have violated guidelines established by the United States Supreme Court in such recent cases as *Lemon v. Kurtzman* (1971). The Indiana Attorney General advised in 1967 that the Indiana Constitution was no more restrictive of programs aiding church related schools than the First Amendment.

While the constitutional prohibition against the lending of the credit of the State to individuals, corporations and associations (Ind. Const., Art. 11,

§ 12) might give rise to questions with respect to the constitutionality of some programs aiding private colleges, this provision was enacted out of the bitter experience of the State in financing internal improvements, and with increasing fiscal responsibility on the part of state government, the courts have permitted appropriations to private groups performing functions in which the public has an interest in cases such as *Bullock v. Billheimer* (1910) and *City of Gary v. State ex rel. Artists' League, Inc.* (1970). Thus, although many of the issues involved have not been litigated, it seems unlikely that the Indiana Constitution would bar programs aiding private colleges and universities which pass muster under the federal establishment clause.

IOWA

The only provision of the Iowa Constitution which might stand as a serious obstacle to public aid to private colleges and universities is Article I, Section 3:

> *The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship or the maintenance of any minister or ministry.*

Insofar as this section affects aid to education, one cannot predict with certainty whether the Iowa courts will find it to be more restrictive than the First Amendment to the United States Constitution, since the last relevant decision of the Supreme Court of Iowa, *Knowlton v. Baumhover*, was handed down in 1918, long before the development of the present body of federal case law, and did not consider many of the issues raised by recently enacted aid programs. The Iowa Attorney General in 1966 and 1969 appeared to indicate disapproval of programs which directly or indirectly channel money to church-related schools, but it does not appear that such a conclusion is required by the precedents. It would be natural for the "establishment" and "free exercise" clauses of Article I, Section 3 to be construed identically to their federal counterparts, and the Supreme Court of Iowa has held that the prohibition against taxation to build places of worship applies to buildings intended to be used "distinctively" as places of worship. Therefore, it seems that the crucial question concerning programs involving transfer of public funds to church-related colleges would be whether the program at issue constitutes support of a "ministry" within the meaning of Article I, Section 3. Should the Supreme Court of Iowa accept the conclusion of the United States Supreme Court in *Tilton v. Richardson* (1971) that the primary purpose and effect of instruction in most church-related colleges is secular, the way might be clear for approval of direct grants to the colleges in support of their secular curriculum should the General Assembly choose to enact them. While the fact that the Tuition Grant program does not require that the money received by the college be used for secular purposes might raise a question, it should be noted that the education and services provided to students typically cost the college far more than it receives in tuition.

KANSAS

The Constitution of Kansas appears to pose no substantial barrier to programs of aid to private nonsectarian colleges or universities. Programs of aid to private nonsectarian colleges or universities. Programs of aid to sectarian institutions would have to pass muster under Section 7 of the Bill of Rights, which provides that no person shall be compelled to attend or support any form of worship, and section 6 of Article 6, which provides that "[n]o religious sect or sects shall control any part of the public educational funds."

A Kansas tuition grant program for students enrolled in private colleges and universities was held constitutional by a federal district court in *Americans United for Separation of Church and State v. Bubb* (1974), although five schools were found ineligible to participate because they required some degree of religious participation, restriction or belief on the part of their students. This case was decided under the First Amendment tests developed by the United States Supreme Court. The Kansas Attorney General had earlier ruled that this program was not barred by Article 6, section 6 because tuition grants cease at the time of payment to be public educational funds and are not subject to the control of a religious sect while they are in the public treasury. Under this construction, programs of loans and scholarships to students would also appear permissible.

Programs of direct aid to sectarian institutions would appear to face more serious difficulties under Article 6, section 6. The Kansas Supreme Court case of *Wright v. School District* (1940) held unconstitutional an attempt to pay public funds directly to a school organized by a religious group. However, the scope of this prohibition will depend primarily upon the construction given "control" and "public educational funds."

KENTUCKY

Kentucky has had extensive litigation involving various forms of aid to educational institutions, but it has centered almost entirely on the elementary and high school level. The major obstacle to programs supporting sectarian schools, section 184 of the State Constitution, prohibits the use of any fund raised or levied for educational purposes to aid church or denominational schools. There appear to be three possible methods to avoid its impact. First, it is arguable that the section does not apply to general funds, which by definition are not specifically "raised" for any one purpose. Secondly, some programs may be classified as health and safety measures, and thus would not use funds for "educational purposes." Apparently, this approach was used by the Kentucky Court of Appeals in the 1946 *Nichols v. Henry* case, which approved the free transportation of the elementary and high school students. Thirdly, section 184 applies only to aid to "schools" so that monetary support given to students could be considered to provide no benefit to such institutions within the meaning of the constitutional provision.

Another major obstacle, concerning both sectarian and nonsectarian colleges, is the requirement in section 184 that no sum can be collected for education other than in common schools until the tax is approved by the

voters. However, there is some case law to suggest that the section does not apply to appropriations for education made from the State's general funds.

The constitutional provisions relating to the lending of credit and making of donations should not apply as long as assistance is for a "public purpose" and the State's credit is never pledged for the repayment of any bonds or other future liabilities.

So far, aid in the form of bus transportation, leasing of buildings and dual enrollment has been approved, and direct institutional aid disapproved, at the lower educational level, as they involved sectarian schools. An early case overruled a tuition credit system at the college level. Overall, Kentucky's Constitution will probably be more restrictive than the federal establishment clause.

LOUISIANA

Louisiana has had a complex and overlapping set of constitutional provisions which restricted state aid to private educational institutions. Within recent years, however, the State has passed legislation to provide aid in the form of tuition grants and teacher salary payments at lower level schools and loans and loan guarantees at college level schools. This changing attitude resulted in fundamental changes in the church and state provisions in the new Constitution, which will go into effect in January, 1975.

With the new provisions and the lack of previous litigation concerning aid at the college level, the limitations on state aid to private colleges are uncertain. However, as for *sectarian* colleges, the new Article 1, section 8, paralleling the federal establishment clause, will be the main obstacle. As the 1970 *Seeger v. Parker* case indicated, the Louisiana Court will tend to follow the U.S. Supreme Court interpretations. While the Louisiana Court accepted the basic "child benefit" theory in 1929 in *Borden v. Louisiana State Bd. of Educ.* and *Parker*, it will still determine if a student is a mere conduit through which a sectarian school is aided and whether such schools are being relieved of their primary financial libailities. The "purpose," "effect" and resulting "entanglement" of a program will also be examined, following the federal three-prong test.

To date, under similar provisions of the old Constitution, only a textbook loan program has been approved and the purchase of secular educational services from teachers disapproved in sectarian schools.

The other potential restrictions on aid to both sectarian and nonsectarian private colleges will be Article 7, sections 10 and 14, which prohibit appropriations for other than public purposes and the lending or donating of the State's funds or credit respectively.

Since the *Borden* case decided that the latter provision did not apply where there was a reasonable exercise of the police power, it is likely these sections will require only that aid programs be in furtherance of a public purpose. There, the Court held that helping education and obliterating illiteracy promoted the general welfare of the people. This conclusion should apply to other forms of educational aid. Also, specific exceptions to section 14 may help sustain aid to "needy" students. Finally, contracts for services

and leasing of property do not appear to fall within the categories of prohibited transactions under these sections.

MAINE

In general, the outlook for state aid to private education in Maine is good. The state has a long history of cooperation between the public and private educational sectors. In addition, the courts have recognized that the Maine Constitution is less restrictive than the Federal Constitution in this area.

Special appropriations to private academies have long been a common practice of the state legislature. Only when sectarian schools are involved are there significant constitutional barriers. Any program of aid to sectarian schools in Maine must meet the test of the establishment clause of the United States Constitution: it must have a purpose and primary effect that neither advances nor inhibits religion. The "purchasing of secular educational services" from parochial schools does not pass this test. However, several other programs should clear the constitutional hurdles. Maine has a released time program that seems safe from any challenge. Shared time programs and schoolbus transportation of nonpublic school students apparently satisfy constitutional demands; however, the legislature has not enacted the enabling legislation to authorize these programs.

In the area of higher education, the situation appears favorable. Maine has amended its Constitution specifically to provide for loans to college students at private as well as public colleges (Art. VIII, § 2). Tuition equalization grants, available to students attending private institutions of higher education, apparently must meet only the tests of the First Amendment. In light of United States Supreme Court decisions on aid to private education at the college level, there seems good chance that tuition grants will be found valid.

More direct forms of aid to private colleges or universities in Maine will have to conform to the requirements of Article VIII, Section 1 of the State Constitution, which states that no grant may be made to a "literary institution" unless the State has the right to control the institution in certain specified ways. In the case of sectarian institutions, such control might create an excessive entanglement between church and state.

In general, the more indirect forms of aid would seem safest from constitutional challenge. So long as excessive entanglement in the affairs of private/sectarian educational institutions is avoided, programs of loans and grants to private college students in Maine should successfully meet the constitutional objections. In general, the test of validity of aid programs at whatever level of education is likely to be that of the Federal Constitution, and not the less restrictive Maine Constitution.

MARYLAND

Maryland has taken a liberal attitude in regulating the separation of church and state, as evidenced by the long history of direct grants to private schools, sectarian and nonsectarian. The First Amendment imposes more stringent limitations on state aid to private educational institutions than any of the Maryland constitutional provisions.

Unlike many other states, there is no specific prohibition against aiding sectarian institutions, and the freedom of religion guarantee in Article 36 of the Declaration of Rights does not contain the typical "establishment" or "preference" language. It forbids only the compelling of any person to contribute to any place of worship or ministry. In the 1966 case of *Horace Mann v. Board of Public Works*, the Maryland Court of Appeals decided that direct grants to certain church-related colleges did not violate Article 36, since the institutions were aided only incidentally and such an advantage became immaterial because of the essential nature of the service rendered in educating citizens of the state. Even though private individuals were benefitted, the grants were justified by the promotion of the general welfare of the State. Thus Article 36 should be no obstacle to supplying aid for sectarian schools, unless the State decides to provide universal educational facilities at the college level for its citizens, in which case *Horace Mann* suggested that different considerations would apply.

The restrictions on the use of the school fund in Article VIII, section 3 will be no problem, since "educational purposes" has been construed to include aid for private schools. Finally, Article III, section 34, dealing with the lending of state credit will be only a minimal obstacle, since the Court of Appeals in the 1952 case of *John Hopkins University v. Williams* ruled that this section does not apply to appropriations of current funds or the borrowing of money by the State, which then gives the cash to private institutions.

By case law or opinions of the Attorney General, programs involving schoolbus transportation, tax exemptions, dual enrollment, school lunches, teacher salary payments, and other secular educational services have been approved.

MASSACHUSETTS

At present, the Forty-sixth Amendment to Massachusetts' Constitution forbids any kind of direct aid to private/sectarian institutions, and many forms of indirect aid. The Amendment provides that "no grant, appropriation or use of public money or property or loan of public credit shall be made . . . for the purpose of founding, maintaining or aiding" any institutions in which any denominational doctrine is inculcated or any institution not publicly owned and controlled. Although private institutions are still considered to serve the public purpose of education, they are largely ineligible to receive State funds. At the elementary and secondary levels, only aid that constitutes a "child benefit" in the health and safety spheres, such as school lunches and schoolbus transportation for private school pupils, has been held to fall outside the constitutional prohibitions.

At the level of higher education, the courts have been slightly more lenient. Facilities assistance was approved largely because it was funded through an authority that was financially independent of the State. The assistance was still required to be confined to secular areas so as to avoid conflict with the First Amendment.

In recent years Massachusetts has moved toward greater assistance to private education. The constitutionality of student loans in the State is now a

settled matter, by virtue of the provisions of Amendment Article XCVI of the State Constitution. The pending amendment which would allow direct aid to private educational institutions and to their students would seem to offer the greatest hope for public assistance to private education in Massachusetts. If this amendment is passed in 1975, only the barriers of the establishment clause of the Federal First Amendment will remain as a serious obstacle to educational aid in Massachusetts.

MICHIGAN

Michigan does not have a long history of strict constitutional prohibition against aid to private or church-related educational institutions. Until 1970, its only constitutional limitations on aid to religion and church-related education were the provisions now included in Article 1, Section 4. The prohibitions of this Section were narrowly construed by the Michigan Courts to permit reading of bible passages without comment in public schools in 1898 and purchase of educational services from parochial schools in 1970. In its 1970 advisory opinion, the Court also stated that Article 1, Section 4 is a restatement of the First Amendment's establishment and free exercise clauses and is subject to similar interpretation. Even after Article 8, Section 2 was amended to expressly prohibit the purchase of educational services from private elementary and secondary schools and to place the validity of other programs involving these schools in grave doubt, the Court construed the amendment to permit such programs as auxilliary services and dual enrollment in the 1971 decision *In re Proposal C*. Thus, the Michigan Supreme Court has shown great reluctance to construe its constitutional provisions limiting the State's role in advancing religion to invalidate educational programs undertaken by the Legislature. Another example of this leniency was the finding of the Court in the 1970 opinion that the purchase of secular educational services advanced religion only incidentally and was therefore permissible under the United States Constitution, a position later rejected by the United States Supreme Court in *Lemon v. Kurtzman*. It thus appears that Michigan's Constitution should prove no obstacle to programs aiding church-related colleges and universities which pass muster under the First Amendment to the United States Constitution.

Although programs involving the lending of money, issuing of bonds, and guaranteeing the repayment of loans must be carefully drafted to ensure that they comply with the Constitutional limitations on the handling of State finances, these provisions do not appear to be serious obstacles to well drafted programs.

MINNESOTA

Minnesota has only recently begun to assist private colleges and universities and their students, but the State Legislature has committed itself to a broad range of programs of tuition grants to students, as well as direct payments to colleges under contracts for the education of Minnesota residents and assistance to colleges in financing and construction of academic

facilities. Insofar as these programs aid private, nonsectarian institutions there seem to be no serious constitutional obstacles to their implementation, but participation in these programs by church-related colleges and universities raises several constitutional issues.

The Minnesota Constitution forbids the State to expend public funds to support a place of worship, or religious ministry, or to benefit a religious society or seminary (Minn. Const., Art. I, § 16). It specifically prohibits the use of public money or property to support schools teaching or promulgating the doctrines of any religious sect (Minn. Const., Art. VIII, § 2).

In Minnesota's only Supreme Court decision involving the constitutionality of aid to church-related educational institutions, *Americans United v. Independent School District No. 622, Ramsey County* (1970) the Court found that the latter Section was more restrictive of aid to such institutions than the First Amendment of the United States Constitution, and that the use of public funds to provide transportation for parochial school pupils, while permitted, was on the verge of unconstitutionality. The Court indicated that for measures which contributed to the health and safety of the children involved, it would give its approval where the primary purpose and effect of the program did not advance religion, but where the program involved direct support of the educational process, a stricter test might be applied. It further indicated that if the State wished to support church-related schools, an amendment to the Constitution might be required.

Since that decision, the United States Supreme Court in *Tilton v. Richardson* (1971) and *Hunt v. McNair* (1973) has distinguished the essentially secular curriculum of church-related colleges and universities from the religiously oriented instruction in parochial schools. Should the Supreme Court of Minnesota accept this distinction, it might be led to permit support of the primarily secular education received in colleges, since one of the bases of the position it espoused in *Americans United* was that support of parochial schools amounted to support of religion.

MISSISSIPPI

There has been very little litigation in Mississippi bearing directly on state aid to private educational institutions, but it appears that church and state barriers have not been stringently enforced. The Attorney General has not issued any opinions on the constitutionality of any existing or proposed legislation in this field. There are no barriers to aid for private, nonsectarian institutions other than the two-thirds vote by the legislature, needed for "donations" or "gratuities" under Article 4, section 66. The main obstacle relating to sectarian colleges, Article 8, section 208, prohibits sectarian control over any part of the state educational funds or appropriations of any funds toward the support of sectarian schools. This provision clearly prohibits most forms of aid directly to such schools, but there may be some flexibility as to what constitutes "support" or a "sectarian purpose."

As for programs aiding students, it is likely they will be sustained if the Mississippi Supreme Court follows the rationale of *Chance v. Mississippi Textbook Rating & Purchasing Bd.*, a 1971 state case. Its strong emphasis on

the child benefit theory and the disclaimer of direct or indirect aid to schools could be used to support a wide range of programs. While the Court would be forced to draw a line at some point to avoid support of sectarian schools, as by a system of exorbitant tuition charges, judicial construction of the Mississippi Constitution, as applied to church and state relations, seems more liberal than the First Amendment. Mississippi's position on support for individuals was expressed best in *Chance* when the Court asserted that a citizen should not be denied benefits common to all because of an exercise of the right to religious freedom.

Because there is so little case law, only a textbook program for all elementary and secondary schools has been explicitly approved, but it is probable that the decisive line will be drawn between aid directly to sectarian schools and that to pupils or other individuals which incidentally supports such institutions.

MISSOURI

Missouri's Constitution contains three groups of provisions which might limit public aid to private colleges and universities.

Article IX, Section 5 and 6 limit the use of the public school and seminary funds to support of the public schools and the State University respectively. These Sections have been strictly construed to forbid the use of the public school fund to transport private school pupils and to provide speech therapy in private schools. They do not appear, however, to affect any program which is financed from funds not dedicated to the support of the public schools or State University, so they should not be an obstacle to any well drafted legislative measure aiding private colleges and universities.

Article III, Sections 38(a), 39(1), and 39(2) forbid the General Assembly to make donations or lend the credit of the State to individuals, associations, or corporations. Political subdivisions of the State are similarly limited by Article VI, Section 23. It appears that these provisions have been subject to the exception that they do not prohibit expenditures for a public purpose, since at least 1894, but "public purpose" was narrowly construed in 1898 in *State ex rel Garth v. Switzler*, to exclude grants for the support of needy students at the State University. Since that time, the Missouri Supreme Court has relaxed its criteria for finding a public purpose, and it seems likely that measures aiding private colleges and universities or their students would be approved in the light of modern needs and conditions.

Finally, Missouri's Constitution contains provisions which forbid the use of public funds directly or indirectly to aid any religious sect or minister or teacher of religion (Mo. Cost., Art. I, § 7), or to help support or sustain any educational institution controlled by a religious denomination (Mo. Const., Art. IX, § 8). These provisions have been construed by the Supreme Court of Missouri only in connection with the incorporation of parochial schools into the public school system, and the opinions gave little indication of how the Court would react to programs aiding church-related colleges and universities. A literal reading of the provisions suggests that they might be construed to limit public aid to church-related colleges and universities more strictly than

the First Amendment to the United States Constitution, but the case of *Paster v. Tussey*, now pending before the Missouri Supreme Court, which concerns the use of public funds to provide textbooks to pupils in parochial schools, may resolve many of the issues which are now in doubt.

MONTANA

Article V, Section 11(5) of Montana's 1972 Constitution forbids any appropriation of public funds for educational or benevolent purposes to a private individual or to a corporation or association not under control of the State. Article X, Section 6 prohibits direct or indirect payment of public funds to aid an educational institution controlled in whole or in part by a religious denomination.

While these provisions have not been construed with respect to programs aiding private colleges and universities, other cases citing them suggest that they may raise questions as to the constitutionality of programs which would be permitted by the Federal Constitution.

In 1963 the Supreme Court of Montana, citing the provision in Montana's previous Constitution which was the source of Article V, Section 11(5), struck down an appropriation to the Veterans of Foreign Wars, and the Disabled American Veterans to provide services to the State's veterans because the groups were not under the control of the State. The rationale of the Court might be applied to prohibit appropriations to private colleges.

In 1970, the State Supreme Court held in *State ex rel. Chambers v. School District No. 10* that a provision of Montana's previous constitution essentially the same as Article X, Section 6 prevented the school district from hiring teachers as public employees to teach secular subjects in a parochial school This was a per curiam opinion and offered little reasoning to support the result.

While neither of these decisions considered the precise issues involved in aid to private colleges and universities, the results reached by the Court and the tone of the opinions indicate that there may be severe constitutional obstacles to programs aiding private colleges and universities in Montana.

NEBRASKA

It appears that Article VII, Section 11 of the Nebraska Constitution may be significantly more restrictive of programs aiding private colleges and universities and their students than the First Amendment to the United States Constitution. The provision forbids any appropriations to any educational institution not owned or exclusively controlled by the State or one of its political subdivisions, thereby limiting aid to private secular colleges as well as church-related institutions. A Nebraska district court has construed this provision to prohibit state tuition grants to students in private colleges in *State ex rel. Rogers v. Swanson* in 1973. A 1958 opinion of the Attorney General reached the same result.

The Nebraska Supreme Court has not ruled on this issue, and its latest decision construing Article VII, Section 11, *State ex rel. School District of*

Hartington v. Nebraska State Board of Education, does not deal directly with many of the questions presented. The Court permitted the use of federal funds to lease classrooms from a parochial school and provide remedial reading and mathematics instruction to public and parochial school pupils, and in doing so appeared to accept the "child benefit theory" employed by the United States Supreme Court in *Everson v. Board of Education*. Three of the seven justices dissented vigorously, however, and a subsequent amendment to Article VII, Section 11 permits the use of federal funds to aid private education, but reaffirms the prohibition against the appropriation of State funds to private schools. Cases pending before the Supreme Court of Nebraska testing the constitutionality of the tuition grant program and the lending of textbooks to private school pupils should resolve many of the questions concerning the limitations on State aid to private colleges and universities in Nebraska.

NEVADA

Nevada has almost no private colleges and no programs of state aid to private educational institutions. Article 11, section 10 of the Nevada Constitution prohibits the use of public funds for sectarian purposes and the Nevada Supreme Court case of *Nevada Orphan Asylum v. Hallock* (1882) indicates programs of direct aid to sectarian educational institutions face a serious hurdle. However, this case is quite old; it does not consider the "child benefit theory" and the court's concern in that case with the impact of the orphanage's religious orientation on the "plastic mind of the child" may have lesser weight at the college level. More recent opinions of the Nevada Attorney General have upheld the constitutionality of certain types of aid programs. In approving school busing and the lending of non-sectarian textbooks, the Attorney General did not discuss the Nevada Constitution. This may indicate a tendency to follow United States Supreme Court interpretations of the First Amendment. A shared time plan has also been approved.

Article 11, section 10 does not prohibit aid to non-sectarian schools, and the prohibitions against the state making donations or loans specifically excepts corporations formed for educational purposes. Therefore, programs of aid to non-sectarian private schools appear constitutionally permissible. Programs of aid to individual students if consistent with Article II, Section 10, either in form of grants, loans, or loan guarantees, appear permissible under sections 9 and 10 of Article 8. The prohibitions of these sections extend to associations and corporations and not to individuals.

NEW HAMPSHIRE

State aid to private education, especially at the college level, would seem to have a promising future in New Hampshire. The state's constitutional provisions relating to such aid are less stringent and less direct than the provisions of the United States Constitution. The most frequently raised prohibition in the New Hampshire Constitution is that of Part 2, Article 83,

"that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination." However, the courts have been rather relaxed in enforcing this program, and have frequently recognized a program as valid on the basis of a "child benefit" or "public purpose" theory. The Justices of the State Supreme Court stated in a 1969 *Opinion of the Justices* that the secular aspects of education "may be supported by tax money if sufficient safeguards are provided to prevent more than incidental and indirect benefit to a religious sect or denomination." The Court has approved loans to educational institutions, aid to nursing and medical education, schoolbus transportation for nonpublic school students, child benefit services, and the provision of textbooks to private school students. On the other hand, it has overturned the programs of distribution of sweepstakes revenue to nonpublic schools and of tax exemptions for parents of parochial school students because they presented direct financial aid to sectarian schools. The dual enrollment program, in one of its manifestations, was declared invalid because of over-entanglement of the state and religious institutions.

To succeed in New Hampshire, then, a program should demonstrate a public purpose and avoid the appearance of direct aid or excessive entanglement. In large measure, the tests of the First Amendment, rather than those of the State Constitution, would be controlling on any program of state aid to private or religious educational institutions. By these standards, the higher education loan program and higher education facilities assistance should be upheld. Loans by an authority established by the legislature to assist educational institutions also seem safe, as furthering a public purpose.

NEW JERSEY

New Jersey, the site of the landmark decision of *Everson v. Board of Education of Ewing Township* (decided by the United States Supreme Court in 1947), is one of those states which offer a wide range of possibilities for public aid to private education. The most important provisions in the State Constitution in this area are Article VIII, Section 3, Paragraphs 2 and 3, which prohibit local and State financial assistance to private persons or institutions. However, in *Everson* and in a long line of later decisions, the courts have interpreted these provisions as not prohibiting aid which serves a public purpose.

The New Jersey Constitution also requires that the school fund be preserved to the use of the public schools. However, as long as a program of aid to private education is separately funded, and as long as it avoids the pitfalls of advancement of religion or excessive entanglement under the First Amendment, it should be upheld in New Jersey. Schoolbus transportation for nonpublic school students was upheld on the basis of a child benefit theory in *Everson*, and the 1947 New Jersey Constitution contained a new provision (Article VIII, Section 4, Paragraph 3) specifically authorizing such transportation. Facilities assistance to private as well as to public institutions of higher education was approved by the Supreme Court of New Jersey in 1971 in *Clayton v. Kervick*. New Jersey also maintains several scholarship programs,

available to public and to private college students, that seem to be unobjectionable under the State Constitution. As the State Attorney General wrote in 1965:

> *[I]f governmental assistance is designed to benefit students, and the institutions which are the recipients of such assistance are committed to fulfill the State's educational policies, it would not be an unconstitutional donation or application of public moneys to include private colleges or universities within the ambit of such a program.*

The Federal First Amendment is a more serious obstacle to aid to private/sectarian education in New Jersey than any provision in the State Constitution. In 1973 a United States District Court struck down a New Jersey program that provided for the furnishing of state aid to the parents of nonpublic school students as reimbursement for secular educational costs and to nonpublic schools for similar reimbursement, because the program constituted an advancement of religion and because it required excessive government entanglement with religion.

NEW YORK

New York's Constitution contains a rather stringent prohibition on aid to "any school or institution of learning wholly or in part under the direction or control of any religious denomination, or in which any denominational tenet or doctrine is taught . . ." (Article 11, Section 3). A proposed new constitution was defeated at the polls in 1967 largely because it contained no such restriction on the use of state funds for denominational schools.

The provisions of Article 11, Section 3 have not, however, totally prevented the State from assisting private/sectarian educational institutions. The New York Constitution makes a specific exception to allow schoolbus transportation of nonpublic school students on an equal basis with public school students. The United States Supreme Court in 1968 upheld New York's provision of secular textbooks to nonpublic school students in *Board of Education v. Allen*, and various released time programs have been held to be constitutional by the courts. However, a program of reimbursement out of state funds of nonpublic schools for the provision of educational testing services was struck down on First Amendment grounds. Similarly, maintenance and repair grants for nonpublic (sectarian) schools, tuition reimbursement for students at those schools, and income tax benefits for their parents were held to constitute an advancement of religion not permissible under the Federal Constitution.

At the college level, New York provides significant aid to private education. The Commissioner of Education is authorized to distribute state funds to private colleges which are eligible for aid under the Federal and State Constitutions. The Commissioner, and the courts, have interpreted Article 11, Section 3 liberally. They have ruled that mere affiliation or a sharing of administrative control by a denomination will not, in and of itself, bring a private educational institution within the proscription of the New York Constitution. Aid is prohibited only where the institution is controlled or

directed by a religious denomination toward a religious end. This distinction is quite similar to that drawn by the United States Supreme Court between institutions with a secular educational mission and those with a religious mission. Hence it would seem that New York's programs of aid to private higher education will have to meet largely the same tests under the State Constitution that they would have to meet under the United States Constitution.

NORTH CAROLINA

North Carolina has fewer potential restrictions on state aid to private colleges and universities than any other southeastern state. The religious freedom guarantee in Article I, section 13 should present very few, if any, obstacles for aid programs to sectarian colleges. It prohibits the control or interference with the rights of conscience, but unlike most other states' provisions, there is no "establishment," "preference," or "support" language. It seems likely that only preferential treatment of schools related to one particular denomination would be characterized as religious interference by the compulsory tax support for one mode of worship.

Tuition grants and loans have been approved by the North Carolina Supreme Court in the 1970 *State Education Assist Auth. v. Bank of Statesville* case, but only in relation to Article V, section 2, which requires that the power of taxation be exercised for public purposes only. The Court held that the issuance of revenue bonds for educational loan and grant purposes feel within the recognized object of government to promote the education of state residents, even though individuals obtained private benefits. This reasoning should apply to other types of aid to private colleges.

While Article IX, section 6 requires that the State school fund be used exclusively for maintaining the free public schools, this is a limitation only on the source of funds to aid private colleges. Similarly the restrictions on lending the credit of the State or the localities would only prevent the use of bonds in a situation where they were deemed a debt and liability of the governmental unit. In respect to strictly nonsectarian colleges there should be no serious State constitutional obstacles. In spite of the minimal State limitations, North Carolina has recognized the more stringent requirements of the First Amendment by specifically excluding all church-related institutions from several programs of aid to private colleges.

NORTH DAKOTA

North Dakota's Constitution has not been construed in relation to aid to private colleges and universities, but it includes several provisions which ought to be weighed even as to a program permissible under the United States Constitution.

Article VIII, Section 152, which requires that educational institutions supported by land grants or "supported by a public tax" remain under the "absolute and exclusive control of the state," might be construed to bar all appropriations which would "support" nonpublic schools.

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Likewise, Article XII, Section 185, which forbids the lending of credit and making of donations to individuals, associations, or corporations except in connection with state business enterprises, internal improvements, and "reasonable support of the poor" might be cited to challenge certain programs aiding private colleges and their students. In any event, careful drafting of any program involving a lending of credit or donations would be required in order to ensure that it fitted within one of the exceptions to the prohibition.

Programs which aided church-related colleges must also comply with the limitations of Article VII, Sections 147 and 152, which provide that the public schools shall not be subjected to sectarian control and that money raised for the support of the public schools shall not be "appropriated to or used for the support of any sectarian school." While dictum in *Gerhardt v. Heid*, a 1936 case concerning the hiring of nuns to teach in public schools, suggests that these provisions bar all aid to sectarian schools, a literal reading of the provisions would seem to indicate that only diversion of public school funds to the support of sectarian schools is forbidden.

The proposed North Dakota Constitution of 1972 would have eliminated the requirement that the State retain control of all educational institutions supported by a public tax while retaining the provision prohibiting the diversion of public school funds to sectarian schools. Article VIII, Section 1 of the proposed Constitution would have removed the restrictions on aid to private secular colleges posed by the present Article VIII, Section 152 and might have been even less restrictive than the First Amendment to the United States Constitution with respect to aid to church-related schools. The State's voters defeated the proposed Constitution after a campaign in which the issue of aid to private educational institutions did not figure prominantly.

It remains to be seen, how the courts will construe the existing Constitution if present legislative initiatives aiding students in private colleges and universities are challenged, and whether the Constitution of North Dakota will be revised to remove the potential obstacles which now exist.

OHIO

The Ohio Constitution forbids the State to compel its citizens to attend, erect, support or maintain any place or form of worship, nor may it give preference by law to any religious denomination. (Ohio Const., Art. I, Section 7). Article VI, Section 2 provides that:

> *no religious or other sect . . . shall ever have exclusive right to or control of, any part of the school funds of this state.*

While these provisions have not been extensively construed by the Supreme Court of Ohio, it does not appear that they will prove more restrictive than the establishment clause of the United States Constitution. When the State Supreme Court approved Ohio's program of auxiliary services to parochial school pupils in *Americans United v. Essex* in 1971, the Court focused its enquiry almost solely on the federal constitutional question. After

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finding the program did not violate the federal establishment clause, the Court approved it under the Ohio Constitution with only cursory discussion. Similarly, an Ohio Common Pleas Court explicitly rejected the contention that the Ohio Constitution limited public aid to parochial schools more strictly than the First Amendment as it approved the use of public funds to transport pupils to private schools in *Honohan v. Holt* in 1968.

Ohio's Constitution limits the State in its financial transactions more stringently than do the constitutions of many other states. In 1964, the Supreme Court of Ohio held in *State ex rel. Saxbe v. Brand* that the State's "credit clause" (Ohio Const., Art. VIII, § 4) forbade State agencies to lend money or their borrowing power to assist profit making private corporations, even when no obligation of the State itself would be created. While the impact of this decision on programs aiding nonprofit colleges and universities is uncertain, Article VI, Section 5 was added to the Constitution to exempt State tuition loan and loan guarantee programs from constitutional limitations, and other existing programs do not seem vulnerable to attack under the credit clause.

OKLAHOMA

The Constitution of Oklahoma contains strong prohibitions against state aid to private educational institutions. Programs of aid to church-related colleges face the stringent prohibition of Article 2, section 5, which provides that "[n]o public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit or support of any . . . sectarian institution as such." A program of aid to any private college would have to pass master under Article 10, section 15, which forbids the lending of the state's credit to any individual, association, or corporation and the making of donations to any association or corporation. The reported cases and opinions of the Oklahoma Attorney General indicate that these provisions are strictly construed. In *Gurney* v. *Ferguson* (1941), the Oklahoma Supreme Court, rejecting the "child benefit" theory," held unconstitutional a school busing plan for parochial school students under Article 2, section 5. In the later case of *Board of Education* v. *Antone* (1963), also involving school busing, the court followed *Gurney* and rejected the "public benefit theory." Although there is language in these two opinions which suggests a church-related college might be able to escape classification as a "sectarian institution as such," the Oklahoma Attorney General has taken the position that Article 2, section 5 is an absolute prohibition against the use of public money for the benefit of any church-related college.

In *Murrow Indians Orphans Home* v. *Childers* (1946), the Oklahoma Supreme Court held that the state could pay a sectarian orphanage for housing and educating orphans. This case was decided under Article 2, section 5 and Article 10 section 15 and supports the conclusion that although appropriations to private colleges have a valid public purpose, absent a contract supported by consideration such an appropriation faces serious constitutional attack.

In a 1965 opinion, relying on *Gurney*, *Antone* and *Murrow* the Attorney

General ruled that classes could not be taught by public school personnel in private schools, that private school pupils could attend public school classes and utilize special personnel (guidance counselors, psychologists, etc.), mobile units, tests, health and physical instructors, books and equipment only if enrolled in the public schools and transported thereto by private transportation for the classes and services, but that library material or textbooks could not be loaned to private school teachers or students. The Attorney General also ruled that federal grant funds constitute public money within the constitutional prohibitions.

It appears that the lending of money, distinguished from the lending of the state's credit, to private colleges is permissible if consistent with Article 2, section 5. Also, programs of grants, or loans, to students also appear permissible, if consistent with Article 2, section 5.

OREGON

The main barrier to aid to private colleges in Oregon is contained in Article 1, section 5 of the Oregon Constitution. This section provides that "[n]o money shall be drawn from the Treasury for the benefit of any religious, or theological institution." In the leading case of *Dickman v. School District* (1961) the Oregon Supreme Court held that the distribution of free textbooks to parochial schools violated this section. In its decision the court rejected the "child benefit theory." The Oregon Attorney General has ruled that such a program would be constitutional if funded by federal grant.

The prohibition of Article 1, section 5 could be interpreted as applying programs of aid directed to students at "religious" institutions. Although there are no reported cases challenging Oregon's programs for loans, scholarships, and need grants, the Oregon Attorney General has ruled that under *Dickman* a program of tuition grants to students at religious institutions would be unconstitutional. The Attorney General recognized, however, that there are no certain guidelines for determining what type of institution would be held to be "religious" by the Oregon Supreme Court. In *Dickman* the court wrote that "[n]either the federal nor the state constitutions prohibit the state from conferring benefits upon religious institutions where that benefit does not accrue to the institution as a religious organization. The proscription is against aid to religious function." If an institution could avoid the "religious" classification, it could avoid the prohibition. Also, if a program were funded by money not "drawn from the Treasury" it could also avoid this prohibition.

Oregon has a program for contracting for secular educational services but there are no reported cases ruling on its constitutionality.

PENNSYLVANIA

The Pennsylvania Constitution seems to open certain avenues for assistance to private education while closing others. The courts have accepted the child benefit theory in the area of health and safety measures for nonpublic school students. Further, released time programs have been

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accepted as valid where they do not involve the use of public buildings. However, Article III, Section 29 of the Pennsylvania Constitution stands in the way of direct appropriations to sectarian institutions. It provides that

> *[n]o appropriation shall be made for charitable, educational or benevolent purposes to any person or community nor to any denominational and sectarian institution, corporation or association . . .*

Direct payments to such institutions may be made only in fulfillment of a governmental obligation or duty to certain persons. It would require a very liberal construction of the Article to consider aid to sectarian colleges valid as in fulfillment of a duty to provide educational opportunities to the citizens of Pennsylvania. Moreover, the establishment clause might well bar such appropriations even if this "duty" theory were accepted.

Appropriations may, however, be made to nonsectarian private educational institutions. Article III, Section 30 requires a two-thirds vote of the legislature before any such appropriation is valid, but Pennsylvania has consistently and abundantly aided many of its independent colleges and universities. Beyond this, the State Constitution specifically authorized scholarship grants and loans for students at private as well as public colleges. The scholarship and loan program need only satisfy the requirements of the First Amendment in order to be upheld.

RHODE ISLAND

Rhode Island has not been very active in the field of state aid to private education. However, the constitutional and legal picture appears bright. First, the courts have determined that the establishment clause of the Rhode Island Constitution (Art. I, § 3) is no more demanding than that of the United States Constitution. Second, the courts have been relatively receptive to the child benefit theory. Schoolbus transportation of nonpublic school students and the provision of secular textbooks to such students have been held to meet the constitutional requirements. Only the direct subsidy to parochial schools of the Salary Supplement Act, under which the State would have paid part of the salaries of teachers of secular subjects in nonpublic elementary schools, has been struck down (by a Federal District Court in *DiCenso v. Robinson* in 1971). In that case the Court emphasized the high degree of religious influence in parochial elementary and secondary schools, and voided the statute on grounds of excessive entanglement by the government with religion. The United States Supreme Court in cases such as *Tilton v. Richardson* and *Hunt v. McNair* has distinguished such a situation from the mere religious affiliation of many church-related colleges. Given this distinction, aid at the college level seems less likely to be struck down as supporting religion than does aid at the secondary or elementary level. In Rhode Island, any aid to private/sectarian schools that passes the tests of the Federal Constitution should survive those of the State Constitution. This would include a properly constructed facilities assistance program and, probably, scholarship and loan programs available to private college students.

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The only other obstacles to aid in Rhode Island are the constitutional limitations on the use of public funds and on borrowing (R. I. Const., Art. IV, § 14; Amendment XXXI, §§ 1-2). As long as proper legislative procedures are followed, these provisions should pose no significant problem.

SOUTH CAROLINA

South Carolina liberalized its restrictions on state aid to sectarian schools in 1973, while at the same time increasing the obstacles for aid to nonsectarian, private colleges. Article XI, section 4, was amended and now prohibits public funds or the credit of the State from being used for the direct benefit of any religious or other private educational institution. Formerly, the provision also applied to "indirect" benefits, but only to private colleges under sectarian control. The effect of this constitutional provision can be avoided in two ways. First, it applies only to "public funds" and state "credit," so that a program using money from other sources would not be affected. This distinction was recognized by the South Carolina Supreme Court in the 1972 case, *Durham v. McLeod*, where all money received by an education authority, including revenue from bonds, was held as a trust fund, to be used to make and guarantee loans to students, and the Court concluded no public money was involved. The state's credit was not used either, since the statute specifically stated that the issuance of bonds would not obligate the State to levy or to pledge any form of taxation or to make any appropriation for their payment.

The second way to avoid Article XI, section 4 is to find that the aid program does not give "direct" benefit to educational institutions. Since all the relevant state cases were decided in relation to the older provision, which included the word "indirect," it is not clear what standards the Court will use in deciding what constitutes "direct" benefit. The Attorney General did issue one opinion after the amendment, approving "tuition payments" to students at sectarian schools, but has not given his views on any other programs. The revision commission intended the change to permit programs aiding students and perhaps contracts for certain types of training. Thus it is likely that the Court would follow this interpretation.

Questions might also arise as to the constitutionality of aid programs under the South Carolina establishment clause in Article I, section 2, but only insofar as sectarian colleges are involved. In *Hunt v. McNair*, a 1970 case, the South Carolina Supreme Court stated that the same reasoning would be applicable to both the state and federal establishment clauses, indicating that it would follow the standards developed by the U.S. Supreme Court. In both *Hunt* and *Durham*, the Court applied the purpose, effect, and entanglement tests to determine if there would be an establishment of religion. Therefore, it is highly probably that programs allowable under the First Amendment will be sustained under the state establishment clause.

Finally, the credit and debt provisions should not present a great problem, since they are applicable only to future liabilities imposed on the State, not appropriations of current funds, and bonds can still be used for aid programs, if the State's credit is not pledged for their repayment.

SOUTH DAKOTA

Article VI, Section 3 of the South Dakota Constitution prohibits the State to compel any person to support a ministry or place of worship against his consent and provides that no money or property of the State shall be appropriated for the benefit of a religious institution. Dealing more specifically with education, Article VII, Section 16 forbids the State to appropriate land, money, property or "credits" to aid any sectarian school, and forbids sectarian instruction in schools aided or supported by the state.

In 1891, in *Synod of Dakota v. State* the Supreme Court of South Dakota cited these Sections in striking down an agreement between the state and a church-related university whereby the State would have paid the tuition of 25 students of education.

South Dakota's Attorneys General have frequently cited *Synod of Dakota v. State* in advising that the South Dakota Constitution prohibits measures benefiting church-related schools which are permitted by the establishment clause of the Federal Constitution.

The South Dakota Legislature, however, has recently enacted programs authorizing expenditure of public school funds to provide textbooks and transportation to pupils in parochial schools. Tuition grants are now offered to students in church-related colleges and universities, and the institutions themselves are eligible for state assistance in financing construction of facilities. The constitutionality of these programs has not been tested, and there is little modern South Dakota precedent upon which the courts might rely in choosing whether to ban all programs which benefit church-related institutions even incidentally, to adopt the federal test banning only such programs which have the primary effect of advancing religion, or to take some intermediate position. Insofar as these programs aid private nonsectarian institutions, however, there appear to be no serious constitutional objections to their implementation.

TENNESSEE

There has been extremely little litigation in Tennessee involving state aid to private colleges and universities, and no relevant opinions of the Attorney General were available. However, it appears the separation of church and state is of much less concern than in many other states. Compulsory support of "any place of worship" is prohibited in Article I, section 3, but it is likely the phrase will be strictly defined to include only churches. Section 3 also contains a typical "no preference" clause, but the Tennessee Supreme Court in a 1970 case, *Fort Sanders v. Health & Educ. Facilities Bd.*, indicated its meaning would be restricted to special treatment of one denomination.

Unlike most other southeastern states, Tennessee does not have a constitutional provision specifically prohibiting appropriations for sectarian institutions. Presently, only state aid in borrowing money by a construction financing arrangement and tax exemptions have received approval in the case law, but it appears that almost all forms of state aid to sectarian colleges would be valid under the Tennessee Constitution.

It is unlikely that successful challenge could be brought under the prohibitions against lending credit in Article 2, sections 31 and 29. The provisions are applicable only where "credit" is lent or given and thus would not apply to a program where the source of funds is money that has been appropriated from the general funds. Also, the cases indicate that if the state aid is appropriated for a "public purpose," then the sections are inapplicable. The promotion of education was so classified in *Fort Sanders* for the purpose of gaining tax exempt status, and it is probable that similar reasoning would be used to reach the same result for the purpose of these sections.

The First Amendment appears to impose greater restrictions on aiding sectarian institutions than does the Tennessee Constitution, and with the State's basic religious orientation this situation is not likely to change in the near future. As for private, nonsectarian colleges, there should be no obstacles other than the remote possibility of violations under the lending of credit sections.

TEXAS

The Constitution of Texas appears to pose no substantial barrier to aid programs to private, nonsectarian colleges or universities. However, aid programs to church-related institutions face church/state provisions of the Texas Constitution that are more precise and restrictive than those of the United States Constitution. Article 1, section 7 provides that "[n]o money shall be appropriated or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary." Texas Attorney General opinions draw a line between an institution that is "sectarian" and one that is "denominational." Aid to "denominational" institutions would not be barred by this section. The language of the Texas Court of Appeals in *Church v. Bullock* (1907) gives some guidance as to how "sectarian" will be defined. The Texas Attorney General has ruled that the tuition equalization program is constitutional, but the participation of students of "sectarian" institutions has not been ruled on by the courts.

The Texas Constitution provides in Article 3, section 50b and 50b-1 for a student loan program. The Texas Constitution contains provisions prohibiting grants, the lending of credit, and appropriations for private purposes, but Texas cases and Attorney General opinions support the conclusion that expenditures made for educational purposes are for public purposes and are not barred by these provisions.

UTAH

Utah does not provide aid to private institutions of higher education or aid to students of private institutions. There are no reported Utah cases or Attorney General opinions dealing with the issue of state aid to higher education. The Utah Constitution provides in Article I, section 4, in language paralleling the First Amendment, that the state "shall make no law respecting an establishment of religion" and, in the same section, provides that "[n]o public money or property shall be appropriated for or applied to any religious

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worship, exercise or instruction, or for the support of any ecclesiastical establishment." Although the Utah courts might be expected to follow the United States Supreme Court interpretations of the First Amendment in applying Article I, section 4, section 13 of Article X is more specific in that it prohibits "appropriation to aid in the support of any school, seminary, academy, college, university or other institution, controlled in whole, or in part, by any church, sect or denomination whatever." The exact scope of this prohibition has not been established in judicial opinions.

Article I, section 4 and Article X, section 13 do not refer to private, non-sectarian educational institutions. Programs of aid to nonsectarian schools could be questioned under Article VI, section 29, but the Utah Supreme Court case of *Bailey* v. *Van Dyke* (1925) suggests Utah courts would be receptive to the argument that public funding of a private educational institution (or a program of direct aid to students) is for a public purpose and therefore does not violate this provision.

VERMONT

The barriers to state aid to private education in Vermont are essentially those set up by the Federal Constitution. The Constitution of Vermont (Ch. I, Art. III) has repeatedly been interpreted as less demanding than the First and Fourteenth Amendments in the area of state involvement with religion. The Vermont Constitution lacks the strict prohibitions on public aid to sectarian or private educational institutions that are found in the constitutions of other states. Instead the Vermont Constitution contains a broad and rather vague injunction to use public funds only for community purposes (Ch. I, Art. IX). And the advancement of education, both public and private, has been held to be such a community purpose. The only real area of concern, then, is the avoidance of support of or excessive government entanglement with religion, as prohibited by the First Amendment and, in turn, by Chapter I, Article III of the State Constitution.

There has been relatively little litigation in this field in Vermont. However, several of the judicial decisions have been broad in their implications for state aid to private schools. The decision by the Supreme Court of Vermont in *Swart v. South Burlington Town School District* in 1961 ruled out tuition payments by the State to parochial schools because of the degree of church control of such schools. The basis of the decision was the violation of the First Amendment. Similarly, the provision of public school teachers to parochial schools, even for secular instruction, was held to involve too great a degree of church-state entanglement in *Americans United for Separation of Church and State v. Oakey* by the United States District Court for Vermont in 1972. However, shared time programs, in which parochial school students get part of their instruction at public schools, apparently are valid. Similarly, released-time programs not involving the use of public funds have not been successfully challenged.

Just as the United States Suprememe Court has done, the courts of Vermont have recognized the distinction between the church *control* of secondary schools and the church *affiliation* of colleges. The barriers to state

aid to private and sectarian colleges are not as high as are those to parochial schools. Construction assistance programs and tuition scholarships and loans to students attending church-related colleges have cleared the federal, and therefore the Vermont, constitutional hurdles. The outlook for aid to higher education in Vermont is good; the public purpose is established in the State Constitution. Essentially it is the federal tests that need be met by any programs established in Vermont. A program that demonstrates a neutrality toward religion while furthering the cause of secular education will almost certainly be held valid under Vermont law.

VIRGINIA

The Constitution of Virginia provides no barrier to state aid for nonsectarian private colleges, but aid to sectarian institutions and students in such institutions faces limitations other than those posed by its freedom of religion provision. Article VIII, section 10 prohibits "appropriation of public funds . . . to any school or institution of learning now owned or exclusively controlled by the State or some political subdivision" but that section contains a proviso authorizing appropriations for educational purposes "in furtherance of . . . education of Virginia students in public and nonsectarian private schools." Section 11 of Article VIII allows "loans to students attending nonprofit institutions of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education." That section also permits a State agency "to assist by borrowing money for construction of educational facilities at such institutions . . ."

The leading cases construing these two sections are the two Virginia Supreme Court cases of *Miller v. Ayres*. In the first *Miller* case (1972) it was recognized that Article VIII, section 11 authorizes loans to students attending sectarian colleges, but held that a program providing for student "loans" repayable either in money or in satisfactory academic progress by the student, provides for conditional gifts or grants, not loans, and thus violated that section. Because such gifts or grants could be made to students in sectarian institutions, Article VIII, section 10 was violated.

Following that decision, the General Assembly revised the program and the constitutionality of the new program was the question in the second *Miller* case (1973). The court recognized that Article VIII, section 10 permits financial aid, without restriction as to form, to students in nonsectarian schools, but held that in order for financial aid to be valid as a loan under section 11 it must be repayable either in money or by public service to the Commonwealth. Certain of the newly-enacted repayment provisions failed this test and were held to provide for conditional grants or gifts in violation of section 11 of Article VIII. Since the grants could be made to students at sectarian institutions there was a violation of section 10 of Article VIII. The opinion leaves for further definition which of Virginia's church-related colleges will be found to be "sectarian" and which "nonsectarian."

In November 1974 the voters of Virginia approved an amendment to section 11 which authorizes the General Assembly to provide for grants, as

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well as loans, to students attending the kinds of private colleges defined in section 11. The 1974 amendment also authorizes the General Assembly to provide for the State and its political subdivisions to make contracts with private institutions for educational and other related services.

WASHINGTON

Programs of aid to private colleges or universities, either sectarian or nonsectarian, face substantial hurdles in the Constitution of Washington. The prohibitions of Article 1, section 11, and Article 9, section 4 place serious restrictions on the use of state funds to aid sectarian schools. Washington cases and Attorney General opinions indicate these restrictions are greater than those imposed by the First Amendment of the United States Constitution. The Washington Supreme Court has on two occasions held unconstitutional public transportation of parochial school pupils. A released time program has also been held unconstitutional; there are no reported cases challenging Washington's shared time program. In the recent case of *Weiss v. Bruno*, the Washington Supreme Court held unconstitutional a program of grants to needy and disadvantaged secondary and elementary students at nonpublic schools and a program of tuition grants to resident students at nonpublic colleges and universities. The court found these plans invalid under both the First Amendment and Article 9, section 4, of the Washington Constitution, which requires that any school maintained or supported by any public funds be free from sectarian control or influence.

Article 8, section 5 of the Washington Constitution prohibits grants and the lending of the state's credit to any individual or corporation but it is not clear how this section would be applied to a program which passed muster under Article 9, section 4.

WEST VIRGINIA

The Constitution of West Virginia appears to have barriers to aid to private colleges or universities no higher than those posed by the First Amendment to the United States Constitution. There is little case law on Article III, section 15, the freedom of religion provision of the West Virginia Constitution. The leading case is *State ex rel. Hughes v. Board of Education* (1970). In *Hughes* the West Virginia Supreme Court found school bus transportation permissible, holding that to deny this transportation would deny to the Catholic parochial school children and their parents the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution and their right of religious freedom in violation of the First Amendment of the United States Constitution and "even more clearly, in violation of the comprehensive provisions of Section 15 of Article III of the Constitution of West Virginia."

Section 6 of Article X prohibits grants to or in aid of any corporation or person, but the construction given that section recognizes the validity of expenditures for the promotion of education.

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There are no reported decisions of cases ruling on the constitutionality of West Virginia's programs for contracting for services, loans, and need grants.

WISCONSIN

Programs aiding private colleges and universities in Wisconsin must comply with several constitutional requirements. Any program involving expenditure of public funds must pass muster under Wisconsin's "public purpose doctrine." Programs found to serve public purposes must not contravene the Constitutional limitations on State debt (Wis. Const. Art. 8, §§ 4, 6-8), and the prohibitions against the lending of the credit of the State (Wis. Const., Art. 8, § 3) and the State's becoming a party to internal improvements (Wis. Const., Art. 8, § 10). Finally, programs which aid church-related colleges and universities are limited by the federal establishment clause and by Article 1, Section 18 of Wisconsin's Constitution which forbids the drawing of money from the treasury "for the benefit of religious societies, or religious or theological seminaries."

While the Supreme Court of Wisconsin voided an attempt to grant funds to a private school as a violation of the public purpose doctrine in 1869 in *Curtis' Administrator v. Whipple*, it appears that the case might not be persuasive precedent in the light of modern conditions.

The debt limitation and credit clauses of the Constitution provide primarily procedural obstacles to most programs. Financial arrangements which do not create an absolute obligation of the State either to pay money not on hand or to act as the surety for another's obligations have been approved by Wisconsin's courts. Thus, legislative appropriations of money already in hand to aid private colleges should not be affected. The prohibition on the State's becoming a party to internal improvements has been narrowly construed to forbid state involvement in a direct way or where the construction is the primary purpose of the State. Where construction is only incidental to a dominant public purpose and governmental function the State may encourage such projects.

Programs aiding church-related colleges and universities, even those which might be approved under the First Amendment's establishment clause, must also comply with Article 1, Section 18 of the Wisconsin Constitution. This Section has been referred to by the Wisconsin Supreme Court as the most restrictive of state constitutional provisions prohibiting aid to religious organizations, but since 1969, in *State ex rel. Warren v. Reuter* and *State ex rel. Warren v. Nusbaum* the Court has found the Section not so restrictive as to preclude acceptance of the "primary purpose and effect" test developed by the United States Supreme Court in such cases as *Lemon v. Kurtzman* (1971) and *Tilton v. Richardson* (1971) to evaluate challenges to programs under the federal establishment clause. The Wisconsin Court held in both *Reuter* and *Nusbaum* that religious organizations could receive incidental benefits from State programs advancing valid public purposes and governmental functions where the primary purpose and effect of the program at issue does not advance or inhibit religion. In both *Reuter* and *Nusbaum*, however, the secular nature of the dental and medical educational processes

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seem to have ensured that the incidental benefit derived by any sectarian function would be slight.

In view of the fact that *Nusbaum* concerned a contract between the State and the church-related University for the secular professional education of dentists, the Wisconsin Supreme Court's restrictive construction of the federal establishment and free exercise clauses may restrict severely the conditions under which the State may aid church-related undergraduate education. If the Court's holding in *Nusbaum* is applicable to undergraduate education as well as to dental education, the following restrictions will be required in any statute providing for aid to church-related institutions:

(1) The statute must limit the use of State funds to the support of the secular educational function it desires to promote.

(2) The statute should prohibit any requirement that students in the programs or departments supported take religious courses as a prerequisite for admission or graduation.

(3) The statute must not regulate areas of institutional policy outside the secular educational department or program supported.

Article I, Section 18 of the State Constitution adds the provision that the department or program supported must be clearly separable by function from any sectarian activities of the university, and that payment be made to the secular department.

Even as it provided for these strict limitations the Court emphasized the completely secular nature of dental education to justify its decision.

> *There is no Catholic way to pull a tooth. Nor is there a Lutheran or Jewish or Mohammedan way to repair a tooth. Exodontists may disagree as to whether to remove or repair an aching molar, but religious beliefs have nothing to do with the difference of opinion.*

The Court might not find this statement true of some of the disciplines in undergraduate education. Thus, even though it professed acceptance of the United States Supreme Court's finding in *Tilton* that church-related colleges and universities maintained their academic curriculum largely independent of religious content, the Wisconsin Court might require even stricter controls on aid to undergraduate education than were required for aid to dental education in *Nusbaum*.

WYOMING

Wyoming has no private colleges offering academic courses. There are no reported Wyoming cases regarding state aid to private or sectarian schools or colleges. There are no Wyoming Attorney General opinions in the area of state aid to private colleges.

The Wyoming Constitution contains strong barriers to state aid to private schools. Article 1, section 19 prohibits giving or appropriating state money "to any sectarian or religious society or institution." Article 3, section 36 prohibits appropriations "for educational purposes "to any person, corporation or community not under the absolute control of the state, nor to any

denominational or sectarian institution or association." The Wyoming Attorney General has ruled a shared time plan constitutional, but a released time plan and the payment of "isolation pay" to one who elects to send his child to a parochial school in a different district, rather than to a public school, also in a different district, have been ruled unconstitutional. The Attorney General has ruled that the payment of the tuition for handicapped children attending private schools would be permissible under certain circumstances, but this result can be explained in large part by the special requirements of the students involved and is of limited applicability. Wyoming has a loan guarantee program, but there is no reported case ruling on its constitutionality.

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APPENDIX B

Grant and Scholarship Program Highlights

In the following pages, selected highlights of significant grand and scholarship programs among the thirty-three states with current programs are summarized. This material is subdivided into distinctive categories as follows: (1) grant programs based on need; (2) scholarship programs; (3) grant programs not based on need; and (4) educational programs for the disadvantaged. Tables XI and XII at the end of the Appendix tabulate the administrative features of the need-based grants and the scholarship programs. These features include the name of each program, eligibility factors, restrictions, funding levels, administering agency, and distribution/impact formulae.

Need-Based Grant Programs

Twenty-four (24) states (Florida, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, New Jersey, New York, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin) currently operate need-based grant programs. In thirteen (13) states (Florida, Maine, Massachusetts, Missouri, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Washington) this type of program represents the principal approach to student aid. In each state financial need is defined in general as that amount necessary to attend an institution of higher learning, less the student/student's family's contribution to the costs of education as determined by a nationally recognized needs analysis firm. Thirteen (13) states (Florida, Indiana, Massachusetts, Minnesota, Missouri, New York, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Vermont, and Washington) make their need-based grant programs equally accessible to students who desire to attend either a public or a private institution of higher education. However, thirteen (13) states restrict their grant awards to students attending private colleges and universities.[1]

In eleven (11) states (Indiana, Iowa, Kansas, Michigan, Missouri, New Jersey, New York, Ohio, South Carolina, South Dakota, and Tennessee) the grant award may be used for tuition and fees only, but awards in Kentucky, Maine, Texas, and Wisconsin may be used for tuition only. The remaining states of Florida, Massachusetts, North Carolina, North Dakota, Oregon, Vermont, Virginia, and Washington place no restrictions upon the use of

[1] Georgia's grant program (not based on need) also restricts attendance to private institutions.

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grant awards. Finally, in Minnesota the grant funds may be expended for tuition and fees, books, supplies, and other expenses in that order only.

The financial assistance programs currently operative in Massachusetts and North Carolina—*General State Scholarships* and *Contracts to Allow Private Institutions to Administer State Appropriated Scholarships to Needy North Carolina Students*, respectively—are, in essence, need-based grant programs, even though each state classifies its award as a scholarship. For example, "scholarship" is defined by North Carolina as an unencumbered award of money or line of credit based solely on need and *not* on academic ability. Likewise, Massachusetts does not require demonstrated academic potential or ability in its awarding of funds, but only the presence of financial need.

In two states, Massachusetts and Vermont, the award may be used by in-state residents to attend either public or private institutions out of state.

Table XI at the end of this appendix summarizes administrative features.

Scholarship Programs

Eighteen states (California, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin) currently operate scholarship programs. In five states (Connecticut, Illinois, Maryland, Rhode Island, and West Virginia), such programs are the major approach to student aid, although Connecticut, Illinois, and Maryland also have active programs of institutional support for their independent colleges and universities. In each state, the scholarship program is equally accessible to the student attending either a public or private institution of higher education. Each state's program is competitive, and financial need is considered of equal importance in the computation of the award in fifteen of the seventeen states. Vermont and Wisconsin are the only states which are exceptions to this. Financial need, in these states, is not considered a significant determinant in the awarding of scholarship funds.

Ten states (California, Illinois, Indiana, Iowa, Kansas, Michigan, New Jersey, Oregon, Rhode Island, and West Virginia) restrict the use of scholarship funds to tuition and fees, but New York's award may be used for tuition only. In Minnesota, scholarship funds may be expended for tuition and fees, books, supplies, and other expenses in that order only.

In five states (Connecticut, New Jersey, Pennsylvania, Rhode Island, and Vermont), the award may be used by in-state residents to attend either public or private institutions out of state. New Jersey, however, restricts the number of scholarships that may be used out of state to 35% of the total number of scholarships awarded.

In Table XII a summary of administrative features is presented. An analysis and comparison of the California and Connecticut programs will assist in interpreting the outlines. Both the California and Connecticut programs are designated as competitive scholarship programs. The awards are available to both public and private college students; both states award them on the results of competitive examinations, and student-demonstrated financial need is a requirement of both states' programs. The programs differ on the following points: (1) The Connecticut award is portable and can be

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used at out-of-state institutions while the California award is not portable and must be used in state; (2) The California scholarships are for full-time students only while the Connecticut awards are available to full or part-time students; (3) the California Scholarship awards are limited to tuition and fees while the Connecticut awards include other legitimate educational expenses; and (4) The maximum annual amounts of the awards differ for the two states.

Grant Programs Not Based on Need

Two states, Alaska and Georgia, have financial assistance programs for students attending private colleges and universities which may be classified as grant programs not based on need. Alaska's *Tuition Grant Program* recognizes no need factor; the funds from a grant under this program may be expended for tuition and fees, books, and room and board. The maximum grant available under this program is $1,400 per year. During fiscal 1972-73, an average award of $1,017 was made to 738 students attending private institutions of higher learning. Both full-time and part-time students are eligible for Alaska's *Tuition Grant Program*.

Georgia's *Grants and Scholarships to College Students Attending Private Colleges* also recognizes no need factor. A fixed grant of $400 per student is authorized and may be used for tuition only. Recent legislation will increase the current fixed grant from $400 to $600 per student; however, it is not anticipated that this increase will materialize until fiscal 1975-76 because of insufficient appropriations for fiscal 1974-75. Georgia's grant program, unlike Alaska's, is available only to full-time students.

Educational Opportunity Programs for the Disadvantaged

Five states (California, New Jersey, New York, Pennsylvania, and Wisconsin) have educational opportunity programs specifically directed toward the economically disadvantaged student. All programs are based on need, and grants awarded may be used to attend either a public or private institution of higher education. In general, these programs are based on the following rationale:

1. To provide special programs on screening, testing, counseling, tutoring, teaching; and
2. To provide supplemental funds for tuition costs in conjunction with developmental, remedial, and compensatory course work; regular tuition assistance; maintenance, inclusive of room and board, personal expenses, clothing, travel, lunches, and health insurance; and textbooks and school supplies.

California's *College Opportunity Grant Program* is primarily for students attending public community colleges, but students are not prohibited from attending either public or private four-year colleges and universities. The award covers tuition and fees, books, room and board, and personal expenses.

The maximum award available is $2,200 per year with an average grant of $1,240 per year. A student may participate in this program for a maximum of four (4) years.

New Jersey's *Educational Opportunity Fund Program (EOFP)* is directed toward the recruitment and financial assistance of needy New Jersey students who wish to attend institutions of higher learning. The program meets up to 100% of costs not covered by the financial resources of the student. Eligibility for continuation in *EOFP* extends for a maximum of six (6) years. The *EOFP* award is portable; however, only 10% of the opportunity grants in any one year may be used at institutions of higher education located out of state.

In New York funds granted under the *Higher Education Opportunity Program (HEOP)* are considered supplemental. The maximum award is $1,500 per year with an average grant of $1,300 per year. During fiscal 1973-74, $45 million was appropriated. Of this amount, $7.4 million was awarded to students attending private colleges and universities. Students who are eligible to participate in this program may receive assistance for a maximum of five (5) years.

Pennsylvania's *Higher Education Equal Opportunity Act* is directed toward remedial, counseling, and tutorial services; funds awarded under this program do not cover tuition and fees. At this writing, specific information with regard to the maximum grant available, average grant award, and term of eligibility is not available.

Awards made under Wisconsin's *Talent Incentive Program* may be used to defray the costs of tuition and fees, room and board, books, supplies, and personal expenses. The maximum award under this program is $1,000 per year.

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Table XI

Need-Based Grant Programs

Florida

Program Name:	Florida Student Assistance Grants.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	None.
Funding level:	FY 1973-74 – $3,600,000.
Administering Agency:	Florida Department of Education.
Distribution/Impact:	An award not to exceed $1,200 per year. During the fiscal year 1972-73, 3171 students were funded with an average grant of approximately $1,160 per student.

Indiana

Program Name:	Educational Grant Program.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1973-74 – $1,300,000.
Administering agency:	State Scholarship Commission.
Distribution/Impact:	An award not to exceed $1,400 per year or tuition and fees, whichever is the lesser.

Program Name:	Freedom of Choice Grant Program.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition and fees.
Funding level:	Biennium 1971-73 – $14,938,164.
Administering agency:	State Scholarship Commission.
Distribution/Impact:	An award not to exceed $1,400 per year or tuition and fees, whichever is the lesser in conjunction with the Educational Grant Program.

Iowa

Program Name:	Iowa Tuition Grant Program.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.

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Table XI (Continued)

Need-Based Grant Programs

Iowa (continued)

Restrictions:	Limited to tuition and fees.
Funding level:	Biennium 1973-75—$18,000,000.
Administering agency:	Higher Education Facilities Commission.
Distribution/Impact:	An award not to exceed $1,000 per year, with an average award of $960 per student.

Kansas

Program Name:	Tuition Grant Program.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1973-74—$2,500,000.
Administering agency:	State Education Commission.
Distribution/Impact:	A maximum award of $1,000 or tuition and fees, whichever is the lesser.

Kentucky

Program Name:	Tuition Grants.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition.
Funding level:	FY 1974-75—$1,000,000 (requested).
Administering agency:	Higher Education Assistance Authority.
Distribution/Impact:	The maximum award shall not exceed 50% of the average state appropriation per FTE student enrolled in all Kentucky public institutions of higher education.

Maine

Program Name:	State Tuition Equalization Program.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition.
Funding level:	FY 1973-74—$200,000.
Administering agency:	Department of Educational and Cultural Services.

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Table XI (Continued)

Need-Based Grant Programs

Maine (continued)

Distribution/Impact:	An award not to exceed $750 per year. An effective income of less than $13,000 per year must be demonstrated in order to qualify.

Massachusetts

Program Name:	General State Scholarships.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	Yes.
Restrictions:	None.
Funding level:	FY 1973-74 - $9,500,000.
Administering agency:	Not available.
Distribution/Impact:	An award not to exceed $900 per year.

Michigan

Program Name:	Tuition Grant Program.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1973-74 - $7,766,000.
Administering agency:	Higher Education Assistance Authority.
Distribution/Impact:	An award not to exceed $1,200 per year.

Minnesota

Program Name:	Grant-In-Aid Program.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition, fees, books, supplies, and other expenses in that order only.
Funding level:	FY 1973-74 - $3,002,025.
Administering agency:	Higher Education Coordinating Commision.
Distribution/Impact:	An award may range from a minimum of $100 to a maximum of $1,000 per year.

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Table XI (Continued)

Need-Based Grant Programs

Missouri

Program Name:	Student Grant Program.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1973-74 $3,500,000.
Administering agency:	Commission on Higher Education.
Distribution/Impact:	An award not to exceed $900 per year, with an average award of $595 per student.

New Jersey

Program Name:	Tuition Aid Grants.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1973-74 $4,000,000.
Administering agency:	State Scholarship Commission.
Distribution/Impact:	An award not to exceed $1,000 per year.

New York

Program Name:	Scholar Incentive Awards.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1972-73 $21,202,654.
Administering agency:	State Education Department.
Distribution/Impact:	An award not to exceed $600 per year, with an average award of $276 per student.

North Carolina

Program Name:	Administration of State Appropriated Scholarships to Needy North Carolina Students.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.

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Table XI (Continued)

Need-Based Grant Programs

North Carolina (continued)

Award Portable:	No.
Restrictions:	Not available.
Funding level:	FY 1973-74 $4,600,000.
Administering agency:	Board of Governors of the University of North Carolina.
Distribution/Impact:	Not available.

North Dakota

Program Name:	State Student Financial Aid Program
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	None.
Funding level:	Biennium 1973-75 $715,000.
Administering agency:	Student Financial Assistance Agency.
Distribution/Impact:	An award not to exceed $500 per year.

Ohio

Program Name:	Instructional Grant Program.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition and fees.
Funding level:	1974 $21,300,000.
Administering agency:	Board of Regents.
Distribution/Impact:	An award not to exceed $1,320 per year, with an average award of $765 per student.

Oregon

Program Name:	Need Grant Awards.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	None.
Funding level:	Biennium 1973-75 $3,200,000.
Administering agency:	State Scholarship Commission.
Distribution/Impact:	A maximum award of $1,500 per year, not to exceed 50% of the student's financial need.

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Table XI (Continued)

Need-Based Grant Programs

South Carolina

Program Name:	Tuition Grant Program.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1973-74—$4,000,000.
Administering agency:	Higher Education Tuition Grants Committee.
Distribution/Impact:	An award not to exceed $1,500 per year, with an average award of $1,235 per student.

South Dakota

Program Name:	State Student Incentive Grant.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1974-75—$150,000.
Administering agency:	Secretary of the Department of Education and Cultural Affairs.
Distribution/Impact:	An award not to exceed $1,000 per year (Program implemented July 1, 1974).

Tennessee

Program Name:	Tuition Grant Program.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1973-74—$2,250,000.
Administering agency:	Student Assistance Agency.
Distribution/Impact:	Award ranges from $100 to $1,000 per year.

Texas

Program Name:	Tuition Equalization Grants.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.

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Table XI (Continued)

Need-Based Grant Programs

Texas (continued)

Restrictions:	Limited to tuition only.
Funding level:	FY 1973-74—$5,000,000.
Administering agency:	Coordinating Board, Texas College and University System.
Distribution/Impact:	An award not to exceed $600 per year.

Vermont

Program Name:	Incentive Grants.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	Yes.
Restrictions:	Not specified.
Funding level:	FY 1973-74—$2,841,589.
Administering agency:	Vermont Student Assistance Corporation.
Distribution/Impact:	An award not to exceed $800 per year.

Virginia

Program Name:	Scholarship Assistance Program.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	None.
Funding level:	FY 1973-74—$75,000 (FY 1974-75—$530,095).
Administering agency:	State Council of Higher Education for Virginia.
Distribution/Impact:	An award not to exceed $400 per year.

Washington

Program Name:	State Need Grant Program.
Public/Private:	Both.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	None.
Funding level:	FY 1973-74—$1,650,000.
Administering agency:	Council on Higher Education.
Distribution/Impact:	An award not to exceed $650 or 1/3 of the student's financial need per year.

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Table XI (Continued)

Need-Based Grant Programs

Wisconsin

Program Name:	Tuition Grant Program.
Public/Private:	Private.
Competitive:	No.
Need Factor:	Yes.
Award Portable:	No.
Restrictions:	Limited to tuition only.
Funding level:	Biennium 1973-75 - $10,100,000.
Administering agency:	Not available.
Distribution/Impact:	An award not to exceed $1,000 per year.

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Table XII

State-Administered Scholarship Programs

California

Program Name:	Competitive Scholarship Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Full-time only.
Restrictions:	Limited to tuition and fees.
Funding Level:	FY 1973-74—$28,506,000.
Administering Agency:	State Scholarship and Loan Commission.
Distribution/Impact:	A maximum award of $2,500 per year or tuition and fees. During fiscal 1973-74, forty-six per cent (46%) of the state's scholarship awards were received by students attending private colleges and universities. This represented 78.7% of the $28,506,000 allocated for this program. An average award of $1,044 was received by each student.

Connecticut

Program Name:	Competitive Scholarship Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	Yes.
Full-time/Part-time:	Both.
Restrictions:	Scholarship funds may be used for tuition and fees, books, board, or any legitimate educational expense.
Funding Level:	FY 1973-74—$2,341,000.
Administering Agency:	Commission for Higher Education.
Distribution/Impact:	An award not to exceed $1,000 per year.

Illinois

Program Name:	Higher Education Student Assistance Law.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Full-time only.
Restrictions:	Limited to tuition and fees.
Funding Level:	FY 1973-74—$59,000,000.
Administering Agency:	State Scholarship Commission.
Distribution/Impact:	An award not to exceed $1,300 per year or tuition and fees, whichever is the lesser.

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Table XII (Continued)

State-Administered Scholarship Programs

Indiana

Program Name:	Scholarship Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Full-time only.
Restrictions:	Limited to tuition and fees.
Funding level:	Biennium 1971-73—$14,938,164.
Administering agency:	State Scholarship Commission.
Distribution/Impact:	An award not to exceed $1,400 per year or tuition and fees, whichever is the lesser.

Iowa

Program Name:	Iowa Scholarship Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Full-time only.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1973-74—$300,000.
Administering agency:	Higher Education Facilities Commission.
Distribution/Impact:	Award ranges from $100 to $600 per year, with an average award of from $500 to $600 per student.

Kansas

Program Name:	State Scholarship Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Full-time (minimum of 12 semester hours or equivalent).
Restrictions:	Limited to tuition and fees. Renewable once.
Funding level:	FY 1973-74—$150,000.
Administering agency:	State Education Commission.
Distribution/Impact:	An award not to exceed $500 per year.

Kentucky

Program Name:	Student Assistance Programs Scholarships.
Public/Private:	Both.
Competitive:	Yes.

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Table XII (Continued)

State-Administered Scholarship Programs

Kentucky (continued)

Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Full-time only.
Restrictions:	None specified.
Funding level:	
Administering agency:	Higher Education Assistance Authority.
Distribution/Impact:	An award not to exceed $1,500 per year.

Maryland

Program Name:	State Scholarship Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Both.
Restrictions:	Scholarship aid may be used to defray all or part of the cost of tuition, fees, room and board.
Funding level:	FY 1973-74 $4,100,000.
Administering agency:	State Scholarship Board.
Distribution/Impact:	An award may range from a minimum of $200 to a maximum of $1,500 per year.

Michigan

Program Name:	Competitive Scholarship Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Full-time only.
Restrictions:	Limited to tuition and fees. The scholarships shall be awarded to residents of each legislative district, and the balance shall be awarded to residents of the state at large.
Funding level:	FY 1973-74 $9,126,000.
Administering agency:	Higher Education Assistance Authority.
Distribution/Impact:	An award not to exceed $1,200 per year or tuition and fees.

Minnesota

Program Name:	State Scholarship Program.
Public/Private:	Both.

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Table XII (Continued)

State-Administered Scholarship Programs

Minnesota (continued)

Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	Yes, for public institutions. Limited to those states which have reciprocal agreements with Minnesota.
Full-time/Part-time:	Full-time only.
Restrictions:	Aid shall be applied to educational costs in the following order only: tuition, fees, books, supplies, and other expenses. Awards restricted to the upper 25% academically.
Funding level:	FY 1973-74: $3,602,525.
Administering agency:	Higher Education Coordinating Commission.
Distribution/Impact:	An award may range from a minimum of $100 to a maximum of $1,000 per year.

New Jersey

Program Name:	State Scholarship Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	Yes. However, a maximum of 5% of the total number of scholarships awarded may be used in institutions outside of New Jersey.
Full-time/Part-time:	Full-time only.
Restrictions:	Limited to tuition and fees only.
Funding level:	FY 1973-74: $7,487,000.
Administering agency:	State Scholarship Commission.
Distribution/Impact:	An award not to exceed $500 per year or tuition and fees, whichever is the lesser.
Program Name:	Incentive Grants (for New Jersey State Scholarship holders).
Public/Private:	Private.
Competitive:	No. See Restrictions.
Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Full-time only.
Restrictions:	Grantee must be a holder of a State Scholarship. The Incentive Grant Program was created to cover tuition and fees, thereby expanding the choice a student may make relative to a college or university.
Funding level:	FY 1973-74: $2,000,000.
Administering agency:	State Scholarship Commission.
Distribution/Impact:	In addition to the scholarship, an award not to exceed $500 per year or tuition and fees, whichever is the lesser. In no case shall the aggregate Scholarship Award and Incentive Grant exceed tuition and fees.

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Table XII (Continued)

State-Administered Scholarship Programs [a]

New York

Program Name:	Regents College Scholarships.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Full-time only.
Restrictions:	Tuition and fees.
Funding level:	FY 1973-74 - $33,000,000.
Administering agency:	Board of Regents.
Distribution Impact:	An award may range from a minimum of $250 per year to a maximum of $1,000 per year. The average award for this past fiscal year was $576.

Oregon

Program Name:	Cash Awards Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Full-time only.
Restrictions:	Limited to tuition and fees.
Funding level:	Biennium 1973-75 - $680,000.
Administering agency:	State Scholarship Commission.
Distribution Impact:	An award not to exceed $500 per year or tuition and fees, whichever is the lesser.

Pennsylvania

Program Name:	State Scholarship Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	Yes.
Full-time/Part-time:	Both.
Restrictions:	None.
Funding level:	FY 1973-74 - $64,000,000.
Distribution Impact:	An award may range from a minimum of $200 to a maximum of $1,200 per year. Awards of up to 50% of need are made for families with incomes of less than $8,000 per year and 33 1/3% for families with incomes in excess of $8,000. Approximately $23,000,000 or 35.9% of all scholarship funds were expended for students attending private colleges and universities.

103

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Table XII (Continued)

State-Administered Scholarship Programs

Rhode Island

Program Name:	State Scholarships.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	Yes.
Full-time/Part-time:	Both.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1973-74—$1,998,000.
Administering agency:	Not available.
Distribution/Impact:	A maximum award of $1,000 per year, with an average award of $750 per year.

Vermont

Program Name:	Honor Scholarships.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	No.
Award Portable:	Yes.
Full-time/Part-time:	Full-time only.
Restrictions:	None.
Funding level:	This program is one of three programs operated by the Vermont Student Assistance Corporation, which allocated $2,841,589 for all three programs.
Administering agency:	Vermont Student Assistance Corporation.
Distribution/Impact:	An award of $100 per year.

West Virginia

Program Name:	State Scholarship Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	Yes.
Award Portable:	No.
Full-time/Part-time:	Full-time only.
Restrictions:	Limited to tuition and fees.
Funding level:	FY 1973-74—$500,000.
Administering agency:	State Commission on Higher Education.
Distribution/Impact:	An award not to exceed $900 per year or tuition and fees, whichever is the lesser.

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Table XII (Continued)

State-Administered Scholarship Programs

Wisconsin

Program Name:	Honor Scholarship Program.
Public/Private:	Both.
Competitive:	Yes.
Need Factor:	No.
Award Portable:	No.
Full-time/Part-time:	Full-time only.
Restrictions:	None.
Funding level:	Biennium 1973-75—$1,400,000.
Administering agency:	Not available.
Distribution/Impact:	An award not to exceed $800 per year.